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U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAY PROGRAM MANUAL

VOLUME 6	ENGINEERING AND TRAFFIC OPERATIONS
CHAPTER 4	CONSTRUCTION AND MAINTENANCE
SECTION 1	GENERAL

SUBSECTION 1 REQUIRED CONTRACT PROVISIONS - FEDERAL-AID
CONTRACTS

Transmittal 155
September 18, 1975
HHO-32

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1. PURPOSE

- * *To prescribe for Federal-aid construction contracts, Required Contract Provisions covering employment, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of contract, and implementation of the Clean Air Act, and Federal Water Pollution Control Act, and to prescribe Federal-aid Proposal Notices (Attachment 2) relative to nonsegregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act.*

2. APPLICATION

- a. *The attached Form PR-1273, "Required Contract Provisions, Federal-Aid Construction Contracts" (Attachment 1), shall be made a part of, and incorporated in, each highway construction contract that involves the expenditure of Federal funds (other than direct Federal, Certification Acceptance, and Appalachian construction contracts).*

* Regulatory material is italicized.

- b. Copies of Form PR-1273 will be furnished to the States upon request to the Federal Highway Administration (FHWA) division offices, after an initial distribution following issuance of this directive. Form PR-1273 issued under this directive is to be used upon receipt of the initial supply. Minor additions covering State requirements may be included in a supplemental specification prepared by the State, provided they are not in conflict with Federal and State laws and regulations and do not change the Required Contract Provisions.
- c. In case a State is temporarily out of Form PR-1273, it may be reproduced or printed by the State in order to avoid delaying a particular letting, provided there is no change in the wording.

3. PAYROLLS, WEEKLY STATEMENTS, AND LABOR SUMMARIES

For all projects, copies of payrolls and weekly statements with respect to the wages paid during the preceding weekly payroll period, filed with the State as set forth in the Required Contract Provisions for the project, are to be retained by the State highway department for the period set forth in Volume 1, Chapter 6, Section 2 of the Federal-Aid Highway Program Manual (FHPM), with respect to the particular project, for review as needed by the FHWA, the Department of Labor, the General Accounting Office, or other agencies at any time during such period.

4. RECORD OF MATERIAL AND SUPPLIES

Upon completion of all contracts except those constructed on the Secondary Highway System, Form PR-47, "Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds," filed with the resident engineer as set forth in the Required Contract Provisions, shall be transmitted promptly to the FHWA division office, in accordance with the instructions printed in Form PR-47 and as outlined in Volume 6, Chapter 4, Section 1, Subsection 9 of the FHPM.

5. SUBLETTING OR ASSIGNING THE CONTRACT

- a. *The subcontracting limitations set forth in 23 CFR 635.113(b), are included in Form PR-1273. Exceptions to such limitations to permit a greater percentage of work to be subcontracted may be authorized as provided*

in 23 CFR 635.113(d). The State may require a contractor to perform with his own organization a percentage of work greater than 50 percent if it so desires.

- b. The Division Administrator shall maintain currently for each project a record of each subcontract authorized by the State together with the names of the participating contractors.

6. NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS
(ATTACHMENT 2)

The State highway departments shall include the notices concerning "Certification of Nonsegregated Facilities," "Implementation of Clean Air Act," and "Federal Water Pollution Control Act," set forth in Attachment 2, in all future bidding proposals for Federal-aid highway construction projects.

7. TERMINATION OF CONTRACT

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

8. IMPLEMENTATION OF THE CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Pursuant to regulations of the United States Environmental Protection Agency (40 CFR Part 15) implementing requirements with respect to the Clean Air Act and Federal Water Pollution Control Act are included in Attachment 1.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS
(EXCLUSIVE OF CERTIFICATION ACCEPTANCE AND APPALACHIAN CONTRACTS)**

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I. APPLICATION

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work or by subcontract.

2. The contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b):

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 5 and 7;
- Section V, paragraphs 1, 5a, 5b, and 5d

II. EQUAL OPPORTUNITY

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contract will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post

in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. **Compliance With Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended

from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions:** The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

III. NONSEGREGATED FACILITIES

(Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any

segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGES

1. General

All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. Classification:

a. The State highway department contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.

b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. Payment of Fringe Benefits:

a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided, however*, the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Payment of Excess Wages:

While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. Apprentices and Trainees (Programs of Department of Labor):

a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway agency or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

b. Trainees, except as provided in 29 CFR 5.15, will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway agency or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted

to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

6. Apprentices and Trainees (Programs of Department of Transportation):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of Section IV, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including apprentices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

8. Violation: liability for unpaid wages; liquidated damages:

In the event of any violation of the clause set forth in paragraph 7, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for unpaid wages:

The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

10. Withholding for liquidated damages:

The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph 8.

V. STATEMENTS AND PAYROLLS

1. Compliance with Copeland Regulation (29 CFR, Part 3):

The contractor shall comply with the Copeland Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

2. Weekly statement:

Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, (including apprentices and trainees described in Section IV, paragraphs 5 and 6, and watchmen and guards) engaged on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.

3. Final labor summary:

The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating, for the completed project, the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in Section VI, hereof, relative to materials and supplies. The provisions of this paragraph are not applicable to contracts for secondary highways or contracts financed solely with funds provided by the Highway Beautification Act of 1965, as amended.

4. Final certificate:

Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

* * * *

The undersigned, contractor on

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title

* * * *

5. Payrolls and payroll records:

a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.

b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act,

the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits.

c. The payrolls shall contain the following information:

(1) The employee's full name, address and social security number. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

(2) The employee's classification.

(3) Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefit funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

(4) The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

(5) The itemized deductions made and

(6) The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by Section V, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to Section IV, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made, for any transportation furnished by the contractor, or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VI. RECORD OF MATERIALS, SUPPLIES AND LABOR

1. The provisions in this section are applicable to all contracts except contracts for secondary highways and contracts financed solely with funds provided by the Highway Beautification Act of 1965, as amended.

2. The contractor shall maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in Section V, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

3. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR-47 with attendant explanations.

4. Where subcontractors are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. "His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owner or rented by him, with or without operators.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirement set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any Items that have been selected as "Specialty Items" for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State high-

way department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign, or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

VIII. SAFETY; ACCIDENT PREVENTION

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, supplies, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

* * *

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

Title 18, United States Code, Section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or

report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

"Shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

**X. IMPLEMENTATION OF CLEAN AIR ACT AND
FEDERAL WATER POLLUTION CONTROL ACT
(APPLICABLE TO CONTRACTS AND SUBCONTRACTS
WHICH EXCEED \$100,000)**

1. The contractor stipulates that any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 C.F.R., Part 15), is not

listed, on the date of contract award, on the U.S. Environmental Protection Agency, (EPA) List of Violating Facilities Pursuant to 40 C.F.R. 15.20.

2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph X in every nonexempt subcontract, and further agrees to take such action as the Government may direct as a means of enforcing such requirements.

FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

1. CERTIFICATION OF NONSEGREGATED FACILITIES

- a. *A certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).*
- b. *Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.*
- c. *Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.*

2. NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

- a. *A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor*

and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

- b. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- c. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and materials suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

3. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By signing this bid, the bidder will be deemed to have stipulated as follows:

- a. That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

- b. *That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.*

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U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SUBJECT Bid Guarantees, Performance Bonds, and
Payment Bonds

FHWA NOTICE

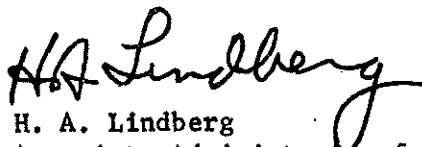
October 9, 1973

HHO-32

Mr. M. F. Maloney's memorandum of July 5, 1972, to Regional Federal Highway Administrators, regarding the subject matter required that the States modify their bonding requirements to meet the provisions of Attachment B to Office of Management and Budget (OMB) Circular No. A-102. Attachment B established minimum requirements for bid guarantees (5 percent of the bid price), performance bonds (100 percent of the contract price), and payment bonds (100 percent of the contract price).

However, because some of the States would have had problems in implementing the OMB bonding requirements Mr. Maloney by his July 21, 1972, memorandum to Regional Federal Highway Administrators made these requirements optional with each individual State on an interim basis. In the same memorandum information on current bonding requirements in each State was requested. This information then formed the basis for a request to OMB for an exception to Attachment B to Circular No. A-102 in regard to bonding on Federal-aid highway projects.

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In view of the uniqueness of the Federal-aid highway program, the General Services Administration, acting by delegation of authority from OMB, advised DOT on August 21, 1973, that they have granted our request for a deviation from the OMB bonding requirements. Therefore, the States may continue to use their own bonding requirements with the understanding that FHWA will monitor the bonding practices of the States and will take the necessary administrative action if any State should prove to be deficient at a future date.



H. A. Lindberg
Associate Administrator for
Engineering and Traffic Operations

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U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SUBJECT Standard Form 30, Amendment of
Solicitation/Modification of Contract

FHWA NOTICE

June 30, 1972

GS-10

The Office of the Secretary has granted FHWA an exemption from the requirement of DOT Procurement Regulations (DOTPR) 12-16.401 that Standard Form 30 be used to amend construction solicitations and contracts.

Accordingly, the regions may disregard DOTPR 12-16.401 and continue using present procedures for amending both solicitations for bids and highway construction contracts.



John R. Provan
Associate Administrator
for Administration

25

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U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAY PROGRAM MANUAL

VOLUME	6	ENGINEERING AND TRAFFIC OPERATIONS
CHAPTER	4	CONSTRUCTION AND MAINTENANCE
SECTION	1	GENERAL

SUBSECTION 2 EQUAL EMPLOYMENT OPPORTUNITY ON FEDERAL AND
FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTS
INCLUDING SUPPORTIVE SERVICES

Transmittal 147
June 26, 1975
HHO-32

- Par. 1. Purpose
 2. Authority
 3. Definitions
 4. Policy
 5. Application
 6. Implementation of Specific Equal Employment
 Opportunity Requirements
 7. Implementation of Special Requirements for the
 Provision of On-the-Job Training
 8. Implementation of Supportive Services
 9. Special Contract Requirements for "Hometown" or
 "Imposed" Plan Areas
 10. Reimbursement Procedures
 11. Inspection and Monitoring Procedures
 12. Reports

1. PURPOSE

- * *To prescribe the policies, procedures, and guides relative to the implementation of an equal employment opportunity program on Federal and Federal-Aid highway construction contracts except for those contracts awarded under 23 U.S.C. 117, and to the preparation and submission of reports pursuant thereto.*

2. AUTHORITY

This directive is issued under the authority of 23 U.S.C. 140, and 315.

* Regulatory material is italicized

- c. The Federal Highway Administration Offices of Civil Rights and Highway Operations have developed the provisions of paragraph 8 of this directive to effect joint implementation of the supportive services effort. The Civil Rights staffs at both Headquarters and field levels must be directly involved with the promotional functions and monitoring activities of the supportive services program.

5. APPLICATION

- a. *Federal-Aid Highway Construction Projects. This directive applies to all Federal-Aid highway construction projects and to Appalachian highway construction projects and other State supervised cooperative highway construction projects except:*

- (1) *Federal-aided highway construction projects being constructed pursuant to 23 U.S.C. 117, and*
- (2) *those projects located in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or a "Hometown" Plan, except for those requirements pertaining to specific provisions involving on-the-job training and those provisions pertaining to supportive services and reporting requirements.*

- b. *Direct Federal Highway Construction Projects. This directive applies to all Direct Federal Highway construction projects except:*

- (1) *for those provisions relating to the special requirements for the provisions of supportive services, and*
- (2) *for those provisions relating to implementation of specific equal employment opportunity requirements in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or "Hometown" Plan.*

6. IMPLEMENTATION OF SPECIFIC EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS

- a. *Federal-Aid Highway Construction Projects*

- (1) *The special provisions set forth in Attachment 1 shall be included in the advertised bidding*

proposal and made part of the contract for each contract and each covered Federal-Aid highway construction subcontract. Moreover, the required contract provisions relating to equal opportunity as set forth in FHWA Form PR 1273, Required Contract Provisions - Federal-Aid Construction Contracts (Attachment 1 of the Federal-Aid Highway Program Manual, Volume 6, Chapter 4, Section 1, Subsection 1), and Form PR 1316, Required Contract Provisions - Appalachian Development Highway System and Local Access Roads Construction Contracts (Attachment 5 of the Federal-Aid Highway Program Manual, Volume 6, Chapter 9, Section 10, Subsection 1), as appropriate, shall be included in all Federal-aid highway construction contracts whether an "Imposed" or a "Hometown" Plan is or is not in effect.

- (2) With the advice of the Regional Civil Rights Director and approval of the Regional Federal Highway Administrator, each Division Engineer shall formally assign to a specific individual on his staff responsibility and necessary authority by which to operate as Division Equal Opportunity Officer. Equal opportunity matters shall have first call on the time of this individual, and his other duties shall be reduced accordingly. As considered appropriate, the individual selected shall possess adequate knowledge of the Federal-aid highway program. In some States this may entail full-time assignment to equal opportunity activities.

b. Direct Federal Highway Construction Projects

- (1) The specific equal employment opportunity responsibilities set forth in the Continuation of Standard Form 19-A (Federal-Aid Highway Program Manual, Volume 6, Chapter 4, Section 1, Subsection 4, Attachment 1), and those under Standard Form 23-A shall be included in the bid documents which exceed \$10,000. When an "Imposed" or "Hometown" plan is in effect, the specific equal employment opportunity responsibilities set forth in the Continuation of SF 19-A shall be superseded.
- (2) *Advertising, award and contract administration procedures for direct Federal highway construction contracts shall be as set forth in Federal Procurement Regulations (FPR) 1-12.805.*

- (a) *In order to obtain information required by FPR 1-12.805-1(d), the following requirement shall be included at the end of the bid schedule in the proposal and contract assembly:*

I expect to employ the following firms as subcontractors on this project: (Naming subcontractors at this time does not constitute a binding commitment on the bidder to retain such subcontractors, nor will failure to enter names affect the contract award):

Name _____

Address _____

Name _____

Address _____

- (b) The Regional Civil Rights Director shall serve as the Deputy Contract Compliance Officer for direct Federal highway construction projects.
- (c) Standard Form 19-B and the above data shall be made available to the Regional Civil Rights Director.
- (d) The names of the prospective contractor and known subcontractors should be compared with the list of debarred contractors which is available in the Regional Office. Under no circumstances shall a contract award be made to, or a subcontract approved for, a firm whose name appears on the debarred bidders' list.
- (e) Prospective contractors or subcontractors with a reputation of having an unfavorable equal employment opportunity posture must be notified in writing of this fact by the Regional Federal Highway Administrators for Regions 8 and 10, or the Regional Engineer, Region 15, in coordination with appropriate civil rights personnel.

A copy of any letter to prospective contractors or subcontractors commenting on their equal opportunity posture must be sent through regular channels to the FHWA Office of Civil Rights.

- (2) *the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),*
 - (3) *the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and*
 - (4) *the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.*
- b. *All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.*
- c. *The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.*

- (d) *the minimum wages of trainees,*
 - (e) *trainees' certifications, and*
 - (f) *keeping records and furnishing reports.*
- (5) *Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA Division Engineer with a recommendation for approval. The Division Engineer is authorized to approve satisfactory training programs for use by Federal-aid highway contractors and subcontractors who are subject to the provisions of this directive.*
- (a) *Employment pursuant to training programs approved by the FHWA Division Engineer will be exempt from the minimum wage rate provisions of Section 113 of Title 12, U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Attachment 2).*
- (6) *Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA Division Engineer. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.*

Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the Division Engineer provided:

- (a) *The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.*

- c. *In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs, State highway agencies shall give preference to the following types of services in the order listed:*
- (1) *Services related to recruiting, counseling, transportation, physical examination, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women,*
 - (2) *Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups,*
 - (3) *Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training,*
 - (4) *Services in connection with providing a continuation of training during periods of seasonal shutdown,*
 - (5) *Followup services to ascertain outcome of training being provided.*
- d. *State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices, shall be submitted to the Administrator for appropriate action.*
- e. *When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.*

- f. *In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises. Regional and division offices shall assure that these efforts are made.*
- g. *As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:*
 - (1) *a statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects,*
 - (2) *a clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, followup procedures, etc.,*
 - (3) *the nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273 and a statement of nondiscrimination in employment because of race, color, religion, national origin or sex,*
 - (4) *the establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided,*
 - (5) *reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems,*
 - (6) *a requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to*

conduct a 6-month followup review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services,

- (7) the basis of payment,*
- (8) an estimated schedule for expenditures,*
- (9) the right of access to contractor or subcontractor records and the right to audit shall be granted to authorized State highway agency and FHWA officials,*
- (10) noncollusion certification,*
- (11) a requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract, and*
- (12) a termination clause.*

The State highway agency's proposal should address itself at least to the items listed in subparagraph 8h below.

h. In reviewing a State highway agency's proposal for supportive services, the Division Administrator, the Regional Civil Rights Director, and Regional Construction and Maintenance Director shall evaluate the training program(s) relative to the supportive services sought, and the proposed supportive services themselves, giving consideration to the following needs:

- (1) counseling,
- (2) recruiting efforts within particular minority, women or disadvantaged groups,
- (3) pre-entry training,
- (4) off-season training, and
- (5) administrative changes.

i. The Regional Civil Rights Director and the Regional Construction and Maintenance Director shall be jointly responsible for reviewing supportive services proposals and recommending approval action. The Regional Highway Administrator or the Administrator shall exercise approval authority in accordance with subparagraph 8k of this directive. Following approval, a project agreement shall be executed by the Division Administrator providing for FHWA reimbursement to the State highway agency. A single project agreement may cover all approved State proposals during a given fiscal year.

- j. Proposals for the type of supportive services enumerated in subparagraph 8c of this directive for both multi-State and single State contracts will be approved by Regional Federal Highway Administrators. Washington Headquarters, on behalf of the Regional Federal Highway Administrators, will have multi-State proposals executed for supportive services of the type enumerated in subparagraph 8c. All proposals for supportive services of a type other than those listed in subparagraph 8c shall be submitted, with recommendations of the division and regional offices, to the Federal Highway Administrator for approval.
- k. *The State highway agency is to furnish copies of the reports received under subparagraph 8g(5) above to the division office which will furnish a copy to the regional office. Reports received by field offices should be summarized and incorporated as part of the monthly narrative reports addressed to the Federal Highway Administrator (FHWA Order 1323.1, Field Office Narrative Reports, dated July 24, 1974). Reporting of this activity should be designated Civil Rights.*

9. SPECIAL CONTRACT REQUIREMENTS FOR "HOMETOWN" OR "IMPOSED" PLAN AREAS

Direct Federal and Federal-aid contracts to be performed in "Hometown" or "Imposed" Plan areas will incorporate the special provision act set forth in Attachment 7.

10. REIMBURSEMENT PROCEDURES (Federal-aid highway construction projects only)

a. On-the-Job Special Training Provisions

Reimbursement for the training provided under these provisions shall be from Federal-aid highway construction funds allocated to each State highway agency. *State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.*

b. Supportive Services

Reimbursement procedures shall consist of the following:

- (1) No programing action is required for these funds.
- (2) With regard to multi-State supportive services contracts, the amount of money involved for each State will be deducted from the amount allotted to the State for that fiscal year.

- (3) *The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.*
- (4) Supportive services funds need not be matched by State funds although voluntary State participation in funding of the activity is encouraged.
- (5) *Where a State highway agency does not obligate all its funds within the time specified in the particular year's allocation directive, the funds shall revert to the FHWA Headquarters office to be made available for use by other State highway agencies, taking into consideration each State's need for and ability to use such funds. It is not necessary that there be a fully executed supportive services contract at the "Point of Obligation." Point of Obligation is that time when the Regional Federal Highway Administrator has approved a definite proposal for supportive services.*
- (6) Funds available under 23 U.S.C. 140(b) which are not allotted to the States will be administered by the FHWA.
- (7) Projects should be numbered 110-1, 110-2, etc., in each State.

11. INSPECTION AND MONITORING PROCEDURES

a. Inspections of Highway Construction Contracts

Construction inspection procedures as contained in Volume 6, Chapter 4, Section 2, Subsection 8 of the FHWA Program Manual as they are considered appropriate shall be used by the Division Engineer in monitoring equal employment opportunity contract provisions on both direct Federal and Federal-aid highway construction contracts. Inspection procedures to be used by FHWA project personnel on direct Federal projects shall be in accordance with the normal project procedures.

b. Monitoring of Supportive Services

The following procedures shall be in effect:

- (1) *Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.*
- (2) With regard to multi-State supportive services contracts, as contemplated under this directive, monitoring responsibility shall be vested in the Regional Administrator when all the States involved are in a single region. When more than one region is involved, monitoring responsibility shall be established at the regional office level by agreement between the Regional Federal Highway Administrators concerned.
- (3) The general FHWA responsibility for the monitoring functions under subparagraphs (1) and (2) above shall rest with Construction and Maintenance personnel. It is the expressed concern of the FHWA to assure that both the training programs and the supportive services related thereto enhance the training and employment opportunities for minority group workers and women in the skilled work classifications of the highway work force. Monitoring the impact of services and training provided shall be the responsibility of Civil Rights personnel. This monitoring effort shall be in close coordination with the appropriate State, division, regional, or Washington Headquarters civil rights officials. State and FHWA civil rights specialists, at the appropriate organizational level, should actively participate in the monitoring function.
- (4) In addition to the responsibilities assigned under subparagraph (3) above, the Office of Civil Rights, in coordination with appropriate State and FHWA field personnel, shall be responsible for conducting such reviews as are necessary to determine, especially with regard to minority group members and women, (a) the total accomplishments resulting from the conduct of approved training programs, and (b) the actual effect upon such programs of the supportive services provided pursuant to this directive.

c. Monitoring by Civil Rights Personnel

Civil rights specialists in the division or region, as appropriate, shall be responsible for conducting compliance reviews and shall have related responsibilities

for determining whether contractors are, in fact, providing equal employment opportunity through affirmative action.

12. REPORTS

a. *Employment Reports on Federal-aid Highway Construction Contracts not subject to "Hometown" or "Imposed" Plan Requirements.*

- (1) *Paragraph 10c of the special provisions (Attachment 1) sets forth specific reporting requirements. FHWA Form PR 1391, Federal-Aid Highway Construction Contractors Annual EEO Report (Attachment 3), and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for Month Ending July 31, 19__ (Attachment 4), are to be used to fulfill these reporting requirements.*
- (2) *Form PR 1391 is to be completed by each contractor and each subcontractor subject to this directive for every month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office. The division equal opportunity officer is to review those reports and forward a copy to the Regional Civil Rights Director when required or requested.*
- (3) *Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office. A copy is to be furnished to both the regional and Washington offices of Civil Rights. It is not intended that Form PR 1392 be completed by any party other than the State highway agency.*

- b. *Employment Reports on Direct Federal Highway Construction Contracts Not Subject to "Hometown" or "Imposed" plan Requirements.*

Forms PR 1391 and PR 1392 shall be used for reporting purposes as prescribed in subparagraph 12a. Changes in the language referring to State highway agency may be necessary when the contracting agency is FHWA.

- c. *Employment Reports on Direct Federal and Federal-Aid Highway Construction Contracts Subject to "Hometown" or "Imposed" Plan Requirements.*

(1) *Reporting requirements for Direct Federal and Federal-aid highway construction projects located in areas where "Hometown" or "Imposed" Plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.*

(2) *In order that we may comply with the U.S. Senate Committee on Public Works' request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.*

- d. *On-the-Job Training Reports for Federal-Aid Highway Construction Projects Pursuant to the Training Special Provisions (Attachment 2).*

(1) *State highway agencies are to require contractors subject to the training special provision to maintain records of training on each trainee. In addition, the contractor is to complete a semiannual report (see Attachment 5, Form FHWA 1409, Federal-Aid Highway Construction Contractor's Semiannual Training Report) for each trainee receiving training under the special provision. The contractor is to submit reports for any training under the training special provision which is provided by any of his*

subcontractors. The contractor is to submit the semiannual reports by the 20th of each July and January. The original of the report will be furnished to the trainee and two copies forwarded to the State highway agency. The State highway agency is to review the report for accuracy and completeness and transmit one copy of it to the FHWA division office.

- (2) *The State highway agencies are to complete a semiannual report (see Attachment 6, Form FHWA-1410, Federal-Aid Highway Construction Semiannual Training Report) summarizing the individual training reports (Form FHWA-1409) submitted by the contractors. Three copies of the completed report are to be transmitted to the FHWA division office by the 30th of the month following the end of the reporting period. The division office will retain one copy and transmit one copy to the regional office and one copy to the Washington office, Construction and Maintenance Division.*
- (3) *State highway agencies are to show the number of trainees and the costs therefrom as a separate item in the P.S.&E. contract and final estimates.*
- (4) *The FHWA division office is to report the number of trainees and the costs therefrom on Form PR-37, Project Status Record submitted to the Program Analysis Division. This item is to be reported on a separate line of Form PR 37 and identified under construction code Y080. The number of trainees shall be reported on the Form PR-37 column 49-52 headed "Cost Estimate". The number of trainees to be reported on at the final estimate stage are those for which the contractor received payment. The total cost and Federal fund amounts reported should be based on estimates or actual payments to the contractor.*

e. Reports on Supportive Services Contracts

- (1) *The State highway agency is to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.*
- (2) Reports received by the FHWA field offices should be summarized and incorporated as part of the monthly narrative reports addressed to the Federal Highway Administrator (FHWA Order 1323.1, Field Office Narrative Reports, dated July 24, 1974). Reporting of this activity should be designated as Civil Rights.



SPECIAL PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. General

- a. *Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.*
- b. *The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.*
- c. *The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.*

2. Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:



Training Special Provisions

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provision will be _____ (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps

that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will

be made even though the contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

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U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION										RSC HCR 01-02									
FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT										REPORT FOR JULY _____ 19 _____									
INSTRUCTIONS																			
<p>This report should be submitted to the State Highway Agency by each contractor and covered subcontractor for the Month of July. Subcontractors should report contract and employment data pertaining to their subcontract work only. The staffing figures to be reported under employment data should represent the project work force on board in whole or in part for the last payroll period preceding the end of the month.</p> <p>The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on the job trainees. Staffing figures to be reported in Tables B and C should only include apprentices and on the job trainees as indicated.</p>																			
1. CHECK APPROPRIATE BLOCK <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> SUBCONTRACTOR					2. NAME AND ADDRESS OF FIRM										3. FEDERAL-AID PROJECT NUMBER				
TYPE OF CONSTRUCTION					COUNTY AND STATE										PERCENT COMPLETE				
4. DOLLAR AMOUNT OF CONTRACT					5. BEGINNING CONSTRUCTION DATE					6. ESTIMATED PEAK EMPLOYMENT MONTH AND YEAR					NUMBER OF EMPLOYEES				
7. EMPLOYMENT DATA																			
Table A															Table B				
JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		NEGRO		ORIENTAL		AMERICAN INDIAN		SPANISH SUR-NAMED AMERICAN		APPRENTICES		ON THE JOB TRAINEES				
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F			
OFFICIALS (Managers)																			
SUPERVISORS																			
FOREMEN & WOMEN																			
CLERICAL																			
EQUIPMENT OPERATORS																			
MECHANICS																			
TRUCK DRIVERS																			
IRONWORKERS																			
CARPENTERS																			
CEMENT MASONS																			
ELECTRICIANS																			
PIPEFITTERS, PLUMBERS																			
PAINTERS																			
LABORERS, SEMI-SKILLED																			
LABORERS, UNSKILLED																			
TOTAL																			
Table C																			
APPRENTICES																			
ON THE JOB TRAINEES																			
8. REMARKS																			
9. PREPARED BY: (Signature and Title of Contractors Representative)															9a. DATE				
10. REVIEWED BY: (Signature and Title of State Highway Official)															10a. DATE				

DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION												OMB NO. 04-R2427							
FEDERAL-AID HIGHWAY CONSTRUCTION SUMMARY OF EMPLOYMENT DATA (INCLUDING MINORITY BREAKDOWN) FOR ALL FEDERAL-AID HIGHWAY PROJECTS FOR MONTH ENDING JULY 31st, 19 ____																RCS CR-01-03			
NOTE: See Instructions on REVERSE																			
STATE-REGION (5-8)				NUMBER OF PROJECTS (9-12)						TOTAL DOLLAR VALUE (13-23)									
01																			
EMPLOYMENT DATA																			
TABLE A																			
JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK		ASIAN AMERICAN		AMERICAN INDIAN		SPANISH SPEAKING		APPRENTICES		ON THE JOB TRAINEES				
	9-13	14-18	19-23	24-28	29-32	33-36	37-40	41-44	45-48	49-52	53-57	58-62	63-66	67-70	71-74	75-78			
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F			
02 OFFICIALS (MANAGERS)																			
03 SUPERVISORS																			
04 FOREMEN																			
05 CLERICAL																			
06 EQUIPMENT OPERATORS																			
07 MECHANICS																			
08 TRUCK DRIVERS																			
09 IRONWORKERS																			
10 CARPENTERS																			
11 CEMENT MASONS																			
12 ELECTRICIANS																			
13 PIPEFITTERS, PLUMBERS																			
14 PAINTERS																			
15 LABORERS, SEMI-SKILLED																			
16 LABORERS, UNSKILLED																			
17 TOTAL																			
TABLE B																			
18 APPRENTICES																			
19 ON THE JOB TRAINEES																			
PREPARED BY (Signature & Title)				DATE		REVIEWED BY (Signature & Title of State Hwy. Official)						DATE							

General Information and Instructions

This form is to be developed from the "Contractor's Monthly EEO Report." This data is to be compiled by the State and submitted annually. It should reflect the total employment on all Federal-Aid Highway Projects in the State as of July 31st. The manpower figures to be reported should represent the project work force on board in all or any part of the last payroll period preceding the end of July. The manpower figures to be reported in Table A should include journeymen, apprentices, and on-the-job trainees. Manpower figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for "Job Categories" are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be useful in complying with the U.S. Senate Committee on Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out Section 22 (A) of the Federal-Aid Highway Act of 1968. In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity.

It is requested that States submit this information annually to the FHWA Divisions no later than August 25.

Line 01.-State & Region Code. Enter the 4-digit code from the list below.

Alabama	01-04	Montana	30-08
Alaska	02-10	Nebraska	31-07
Arizona	04-09	Nevada	32-09
Arkansas	05-06	New Hampshire	33-01
California	06-09	New Jersey	34-01
Colorado	08-08	New Mexico	35-06
Connecticut	09-01	New York	36-01
Delaware	10-03	North Carolina	37-04
Dist. of Col.	11-03	North Dakota	38-08
Florida	12-04	Ohio	39-05
Georgia	13-04	Oklahoma	40-06
Hawaii	15-09	Oregon	41-10
Idaho	16-10	Pennsylvania	42-03
Illinois	17-05	Puerto Rico	43-01
Indiana	18-05	Rhode Island	44-01
Iowa	19-07	South Carolina	45-04
Kansas	20-07	South Dakota	46-08
Kentucky	21-04	Tennessee	47-04
Louisiana	22-06	Texas	48-06
Maine	23-01	Utah	49-08
Maryland	24-03	Vermont	50-01
Massachusetts	25-01	Virginia	51-03
Michigan	26-05	Washington	53-10
Minnesota	27-05	West Virginia	54-03
Mississippi	28-04	Wisconsin	55-05
Missouri	29-07	Wyoming	56-08

FORM APPROVED
OMB NO. 04-R2434

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTOR'S SEMIANNUAL TRAINING REPORT				REPORTS CONTROL SYMBOL HHO-30-16 FEDERAL-AID PROJECT NO.				
INSTRUCTIONS: This report is to be completed by the contractor semiannually for each individual employed on this contract (including any subcontracts under it who has received training during the reporting period under the training special provision (attachment 2 FHPM 6-4-1.2)). The report is to be submitted by the 20th of the month following the reporting period, (July 20, and January 20). The original of this report is to be furnished to the trainee and two copies submitted to the State Highway Department.								
1. NAME OF CONTRACTOR				1A. ADDRESS				
2. NAME OF TRAINEE			2A. SEX <input type="checkbox"/> M <input type="checkbox"/> F	2B. ADDRESS				
3. AGE OF TRAINEE		4. SOCIAL SECURITY NUMBER		5. EMPLOYEE STATUS (CHECK ONE) <input type="checkbox"/> NEW HIRE <input type="checkbox"/> UP-GRADE				
6. ETHNIC GROUP DESIGNATION (CHECK ONE) <input type="checkbox"/> NEGRO <input type="checkbox"/> ORIENTAL <input type="checkbox"/> AMERICAN INDIAN <input type="checkbox"/> SPANISH AMERICAN <input type="checkbox"/> OTHER								
7. SUMMARY OF PREVIOUS TRAINING: (ENTER AMOUNT AND TYPE OF TRAINING RECEIVED BY TRAINEE ON OTHER CONTRACTS UNDER APPROVED TRAINING PROGRAMS)								
8. JOB CLASSIFICATION OF TRAINEE			9. DATE TRAINING STARTED ON THIS CONTRACT		10. TYPE OF ON THE JOB TRAINING (CHECK ONE) <input type="checkbox"/> APPRENTICESHIP <input type="checkbox"/> OTHER			
REPORTING PERIODS								
INSTRUCTIONS: One vertical column is to be completed for each succeeding reporting period and the form submitted. Enter June 30, Dec. 30, as applicable in columns A thru H below.								
	A	B	C	D	E	F	G	H
11.	19 ____	19 ____	19 ____	19 ____	19 ____	19 ____	19 ____	19 ____
	PROVIDED DURING REPORT PERIOD							
	PROVIDED TO DATE							
13.	REMAINING TO COMPLETE THE APPROVED PROGRAM							
14. TERMINATION (IF TRAINING WAS TERMINATED PRIOR TO COMPLETION OF APPROVED PROGRAM EXPLAIN REASON FOR TERMINATION)								
15. REPORT PREPARED BY (SIGNATURE AND TITLE OF CONTRACTOR'S REPRESENTATIVE)						16. DATE		
16. REPORT REVIEWED BY (SIGNATURE AND TITLE OF STATE HIGHWAY OFFICIAL)						17. DATE		

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**FEDERAL - AID HIGHWAY CONSTRUCTION SEMIANNUAL
TRAINING REPORT**

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

**REPORTS CONTROL
SYMBOL
HHO-30-16**

NOTE: TO BE COMPLETED BY STATE HIGHWAY DEPARTMENT (See instructions on reverse side)

STATE	1	2	3	4	PERIOD ENDING	5	6	7	LEGEND
									N-NEGRO OR-ORIENTAL O-OTHER I-AMERICAN INDIAN S-SPANISH AMERICAN

LINE NO.	TRAINING CLASSIFICATION A	NUMBER RECEIVING TRAINING DURING REPORT PERIOD B								NUMBER STARTING TRAINING DURING REPORT PERIOD C								NUMBER COMPLETING TRAINING DURING REPORT PERIOD D								TOTAL HOURS OF TRAINING DURING REPORT PERIOD E
		TOTAL	N	OR	I	S	O	TOTAL	N	OR	I	S	O	TOTAL	N	OR	I	S	O	TOTAL						
03	EQUIPMENT OPERATORS																									
04	MECHANICS																									
05	TRUCK DRIVERS																									
06	IRON WORKERS																									
07	CARPENTERS																									
08	CEMENT MASONS																									
09	ELECTRICIANS																									
10	PIPEFITTERS PLUMBERS																									
11	PAINTERS																									
12	OTHER SKILLS																									
13	TOTAL																									
14	NUMBER OF FEMALES RECEIVING TRAINING	10-12				NUMBER OF FEMALES STARTING TRAINING				13-15				NUMBER OF FEMALES COMPLETING TRAINING				16-18								
	NUMBER OF NEW-HIRES RECEIVING TRAINING	19-21				NUMBER IN APPRENTICESHIP TRAINING				22-24				NUMBER OF TERMINATIONS PRIOR TO COMPLETION OF TRAINING				23-27								
	NUMBER OF UP-GRADES RECEIVING TRAINING	28-30				NUMBER IN OTHER ON-JOB-TRAINING				31-33				NUMBER OF PROJECTS UNDER WAY DURING REPORTING PERIOD AND CONTAINING TRAINING SPECIAL PROVISIONS				34-36								
COMMENTS																										
REPORT PREPARED BY (SIGNATURE) AND TITLE OF STATE OFFICIAL																			DATE							

INSTRUCTIONS FOR PREPARING AND TRANSMITTING FORM FHWA-1410

1. This report is to be completed semiannually by the state highway department summarizing the FHWA-1409 training data.
2. Four copies of the report are to be submitted to the FHWA Division Office. It is intended that they be submitted no later than the 30th of the month following each reporting period (*July 30 and January 30.*)
3. Lines 3-11 should be reported for ONLY those classifications indicated, if a classification does not fit in one of these skills, then it is to be reported on Line 12 OTHER SKILLS.
4. Blocks 1-2 should indicate the state assigned code (*see below*)
5. Blocks 3-4 should indicate the region number (*see below*)
6. Block 5 should indicate reporting period; Blocks 6-7 should indicate calendar year.
7. Number of new hires receiving training + number of up-upgrades receiving training = number in apprenticeship training + number in other on-job training = total number receiving training during the reporting period.
8. Blocks 55-60 Report to the nearest WHOLE hour.
9. Line 14 Report the TOTAL number of females that are INCLUDED in the figures reported for EACH of the training classifications as receiving starting and completing training.

Alabama	01-04	Montana	30-08
Alaska	02-10	Nebraska	31-07
Arizona	04-09	Nevada	32-09
Arkansas	05-06	New Hampshire	33-01
California	06-09	New Jersey	34-01
Colorado	08-08	New Mexico	35-06
Connecticut	09-01	New York	36-01
Delaware	10-03	North Carolina	37-04
Dist. of Col.	11-03	North Dakota	38-08
Florida	12-04	Ohio	39-05
Georgia	13-04	Oklahoma	40-06
Hawaii	15-09	Oregon	41-10
Idaho	16-10	Pennsylvania	42-03
Illinois	17-05	Puerto Rico	43-01
Indiana	18-05	Rhode Island	44-01
Iowa	19-07	South Carolina	45-04
Kansas	20-07	South Dakota	46-08
Kentucky	21-04	Tennessee	47-04
Louisiana	22-06	Texas	48-06
Maine	23-01	Utah	49-08
Maryland	24-03	Vermont	50-01
Massachusetts	25-01	Virginia	51-03
Michigan	26-05	Washington	53-10
Minnesota	27-05	West Virginia	54-03
Mississippi	28-04	Wisconsin	55-05
Missouri	29-07	Wyoming	56-08

Special Contract Requirement for "Hometown" or "Imposed" Plan Areas

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR-1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20591

May 14, 1971

INSTRUCTIONAL MEMORANDUM 40-3-71
HO-32

SUBJECT: Inspection and Reporting Requirements
FHWA Order, Interim 7-2(2) - Training Program
Federal-aid Highway Construction Contracts

This issuance provides the reporting requirements considered necessary to properly monitor the progress and effectiveness of the training program established by FHWA Order, Interim 7-2(2). These reporting requirements are applicable only to projects which contain the new training special provision. General instructions pertaining to the review of this program by FHWA area engineers are also included.

Some of the reporting requirements included in this issuance were established, on an interim basis, in FHWA Notices dated January 29, 1971, and February 25, 1971.

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1. Reporting Requirements (RCS HO-30-16, HO-30-17, and HO-30-15, respectively)

a. The State highway departments are to require contractors subject to the training special provision to maintain records of training provided each trainee. In addition, the contractor is to complete a quarterly report (see Attachment A, FHWA 1409) for each trainee receiving training under the special provision. The form is self-explanatory and will require the following information:

- (1) Contractor's name and address.
- (2) Trainee's name, address, age, social security number, ethnic group designation, and whether he is a new hire or is being upgraded.
- (3) A summary of previous training received on other contracts under approved training programs.
- (4) The job classification for which training is provided, the date training started, and the type of training to be provided.
- (5) The hours of training provided the trainee during the quarter.
- (6) The total hours of training provided the trainee to date on the contract.

(more)

- (7) The hours of training remaining to complete the approved training program.
- (8) Reasons for the termination if training was terminated prior to completion of the approved program.

The contractor is to submit reports for any training under the training special provision which is provided by any of his subcontractors.

The contractor is to submit the quarterly reports by the 20th of the month following the end of the quarter. The original of the report will be furnished to the trainee and two copies forwarded to the State highway department. The State is to review the report for accuracy and completeness and transmit one copy of it to the FHWA division office.

b. The State highway departments are to complete a quarterly report (see Attachment B, FHWA 1410) summarizing the individual training reports (Form FHWA 1409) submitted by the contractors. As indicated on Form FHWA 1410 this report will show, as of the end of the quarter:

- (1) The number of projects underway during the quarter which contain the training special provision.
- (2) By job training classification:
 - (a) The number receiving training during the quarter.
 - (b) The number of new trainees entering training during the quarter.
 - (c) The number of trainees completing training during the quarter.
 - (d) The total hours of training provided during the quarter.
- (3) Minority group figures under (2) (a), (b), and (c) above.
- (4) The number of new hires receiving training during the quarter.
- (5) The number of upgrades receiving training during the quarter.
- (6) The number in apprenticeship type training during the quarter.
- (7) The number in non-apprenticeship type training during the quarter.
- (8) The number of terminations prior to completion during the quarter.

(more)

Three copies of the completed report are to be transmitted to the FHWA division office by the 30th of the month following the end of the quarter. The division office will retain one copy and transmit one copy to the regional office and one copy to the Washington office, Construction and Maintenance Division.

c. The State highway departments are to show the number of trainees and the costs therefor as a separate item in the P.S. & E., contract, and final estimates.

d. The FHWA division office is to report the information indicated below on a monthly basis for all Federal-aid contracts which are awarded during the month and which contain the training special provision attached to FHWA Order, Interim 7-2(2). It is suggested that the Training Program Report, which has been designated RCS HO-30-15, be submitted in the following format:

State _____

<u>Federal-aid Project No.</u>	<u>Date of Award</u>	<u>No. of Trainees Specified</u>	<u>Contract Amount</u>
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The division office is to transmit one copy of its report to the regional office and one copy to the Washington office, Construction and Maintenance Division. The reports for each month should be transmitted early enough to reach the receiving offices by the 15th of the following month.

It is recognized that the State highway department would not normally furnish the division office some of the information needed to fulfill these reporting requirements. This will be especially true for Secondary Road Plan projects. The division office should arrange to obtain any such needed information from the State highway department.

e. The FHWA division office is to report the number of trainees and the costs therefor on Form PR-37, Project Status Report, submitted to the Program Analysis Division. This item is to be reported on a separate line of Form PR-37 and identified under construction code Y080. The number of trainees shall be reported on the Form PR-37 in column 49-52 headed "Cost Estimate." The number of trainees to be reported on

(more)

at the final estimate stage are those for which the contractor received payment. The total cost and Federal fund amounts reported should be based on estimates or actual payments to the contractor.

2. Inspection Instructions

Area engineers should, during their construction inspections and contacts, cover the State's control procedures relating to the training special provision and contractor compliance with it in the same manner that they cover other contract items. Reporting should reflect the same treatment. However, during the introductory period, the area engineers should place particular emphasis on the training item.

The quality of training being provided is particularly important and difficult to evaluate. For this reason area engineers should interview trainees occasionally to obtain their views of their training, particularly its quality. The adequacy of contractor efforts to enroll minority trainees is also worthy of close attention.

Attachments (2)



F.C. Turner
Federal Highway Administrator

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAY CONSTRUCTION
CONTRACTOR'S QUARTERLY TRAINING REPORT

INSTRUCTIONS: THIS REPORT IS TO BE COMPLETED BY THE CONTRACTOR QUARTERLY FOR EACH INDIVIDUAL EMPLOYED ON THIS CONTRACT (INCLUDING ANY SUBCONTRACTS UNDER IT WHO HAS RECEIVED TRAINING DURING THE QUARTER UNDER THE TRAINING SPECIAL PROVISION (ATTACHMENT 2 TO FEDERAL HIGHWAY ADMINISTRATION ORDER INTERIM 7-2(2)). THE REPORT IS TO BE SUBMITTED BY THE 20TH OF THE MONTH FOLLOWING THE QUARTER (APRIL 20, JULY 20, OCTOBER 20, AND JANUARY 20.) THE ORIGINAL OF THIS REPORT IS TO BE FURNISHED TO THE TRAINEE AND TWO COPIES SUBMITTED TO THE STATE HIGHWAY DEPT.

1. NAME OF CONTRACTOR		1A. ADDRESS	
2. NAME OF TRAINEE		2A. ADDRESS	
3. AGE OF TRAINEE	4. SOCIAL SECURITY NUMBER	5. EMPLOYEE STATUS (CHECK ONE) <input type="checkbox"/> NEW HIRE <input type="checkbox"/> UP-GRADE	
6. ETHNIC GROUP DESIGNATION (CHECK ONE) <input type="checkbox"/> NEGRO <input type="checkbox"/> ORIENTAL <input type="checkbox"/> AMERICAN INDIAN <input type="checkbox"/> SPANISH AMERICAN <input type="checkbox"/> OTHER			
7. SUMMARY OF PREVIOUS TRAINING: (ENTER AMOUNT AND TYPE OF TRAINING RECEIVED BY TRAINEE ON OTHER CONTRACTS UNDER APPROVED TRAINING PROGRAMS)			
8. JOB CLASSIFICATION OF TRAINEE		9. DATE TRAINING STARTED ON THIS CONTRACT	10. TYPE OF ON THE JOB TRAINING (CHECK ONE) <input type="checkbox"/> APPRENTICESHIP <input type="checkbox"/> OTHER
REPORTING PERIODS			
INSTRUCTIONS: ONE VERTICAL COLUMN IS TO BE COMPLETED FOR EACH SUCCEEDING QUARTER AND THE FORM RESUBMITTED. ENTER MARCH 31, JUNE 30, SEPT. 30, DEC. 30, AS APPLICABLE IN COLUMNS A THRU H BELOW.			
	HOURS OF TRAINING DATA	A	B
		19 ____	19 ____
11.	PROVIDED DURING QUARTER		
12.	PROVIDED TO DATE		
13.	REMAINING TO COMPLETE THE APPROVED PROGRAM		
14. TERMINATION (IF TRAINING WAS TERMINATED PRIOR TO COMPLETION OF APPROVED PROGRAM EXPLAIN REASON FOR TERMINATION)			
15. REPORT PREPARED BY (SIGNATURE AND TITLE OF CONTRACTOR'S REPRESENTATIVE)		16. DATE	
16. REPORT REVIEWED BY (SIGNATURE AND TITLE OF STATE HIGHWAY OFFICIAL)		17. DATE	

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION															REPORTS CONTROL SYMBOL HO-3C-1?					
FEDERAL-AID HIGHWAY CONSTRUCTION QUARTERLY TRAINING REPORT																				
INSTRUCTIONS: THIS REPORT IS TO BE COMPLETED QUARTERLY BY THE STATE HIGHWAY DEPARTMENT SUMMARIZING THE FHWA-1409 TRAINING DATA. FOUR COPIES OF THE REPORT ARE TO BE SUBMITTED TO THE FHWA DIVISION OFFICE BY THE 30TH OF THE MONTH FOLLOWING EACH QUARTER (APRIL 30, JULY 30, OCTOBER 30, AND JANUARY 30.)																				
1. STATE					2. QUARTER ENDING					3. NUMBER OF PROJECTS UNDERWAY DURING QUARTER AND CONTAINING TRAINING SPECIAL PROVISIONS										
LEGEND: N-NEGRO OR-ORIENTALS I-AMERICAN INDIANS S-SPANISH AMERICANS O-OTHER																				
LINE NO.	TRAINING CLASSIFICATION A	NUMBER RECEIVING TRAINING DURING QUARTER B						NUMBER STARTING TRAINING DURING QUARTER C						NUMBER COMPLETING TRAINING DURING QUARTER D						TOTAL HOURS OF TRAINING DURING QUARTER E
		TOTAL	N	OR	I	S	O	TOTAL	N	OR	I	S	O	TOTAL	N	OR	I	S	O	
4.	EQUIPMENT OPERATORS																			
5.	MECHANICS																			
6.	TRUCK DRIVERS																			
7.	IRONWORKERS																			
8.	CARPENTERS																			
9.	CEMENT MASONS																			
10.	ELECTRICIANS																			
11.	PIPEFITTERS PLUMBERS																			
12.	PAINTERS																			
13.	OTHER SKILLS																			
14.	TOTALS																			
15. COMMENTS																				
16. NUMBER OF NEW HIRES RECEIVING TRAINING										17. NUMBER IN APPRENTICESHIP TRAINING					18. NUMBER OF TERMINATIONS PRIOR TO COMPLETION OF TRAINING					
16A. NUMBER OF UP-GRADES RECEIVING TRAINING										17A. NUMBER IN OTHER ON-JOB TRAINING										
19. REPORT PREPARED BY (SIGNATURE AND TITLE OF STATE HIGHWAY OFFICIAL)															20. DATE					

THE UNIVERSITY OF CHICAGO

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U. S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAY PROGRAM MANUAL

VOLUME 6	ENGINEERING AND TRAFFIC OPERATIONS
CHAPTER 4	CONSTRUCTION AND MAINTENANCE
SECTION 1	GENERAL

SUBSEC. 4 REQUIRED LABOR STANDARDS PROVISIONS - DIRECT FEDERAL HIGHWAY CONTRACTS

Transmitt
May 29, 1
HHO-12

- Par. 1. Purpose
2. Application
3. Payrolls, Weekly Statements and Labor Summaries
4. Wage Determination Decisions

1. PURPOSE

To prescribe for direct Federal highway construction contracts, required contract provisions covering employment, safety, specific equal employment opportunity responsibilities and false statements concerning highway projects.

2. APPLICATION

- a. *The form "Continuation of Standard Form 19-A, Labor Standards Provisions" (Attachment 1) shall be made a part of all highway construction contracts under the direct supervision of the Federal Highway Administration. The form shall be incorporated in each highway construction contract as a continuation of Standard Form 19-A, Labor Standards Provisions and the clauses set forth in paragraph 7 of Attachment 1 shall be included in all subcontracts.*
- b. *Such additional labor standards provisions as hometown or imposed equal employment opportunity plans shall be added at the end of the form. Superseded provisions in the continuation form shall be deleted as necessary.*

3. PAYROLLS, WEEKLY STATEMENTS AND LABOR SUMMARIES

Standard Form 19-A and the continuation form require the submission of the weekly payroll and statement of compliance. All such documents shall be preserved for a period of 3 years from the date of the final payment to the contractor.

4. WAGE DETERMINATION DECISIONS

The Wage Determination Decision shall be included in all contracts as an attachment at the end of the Continuation of Standard Form 19-A.

Attachment

**CONTINUATION OF STANDARD FORM 19-A
LABOR STANDARDS PROVISIONS**

(DOT/FHWA 3-74)

1. WEEKLY STATEMENT

The contractor and each subcontractor shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by the Copeland Act Regulations, 29 CFR, Part 3, and by 29 CFR, Part 5, during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. The statement shall be on U.S. Department of Labor Form WH 348, "Statement of Compliance," or on an identical form on the back of U.S. Department of Labor Form WH 347, "Payroll (For Contractor's Optional Use)," or on any form with identical wording. Copies of these forms may be purchased from the Government Printing Office.

2. EMPLOYMENT PRACTICES

a. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor and each subcontractor shall make all necessary arrangements for them to be cashed and shall give information to their employees regarding such arrangements.

b. No fee of any kind shall be asked or accepted by the contractor, or any, of his agents or subcontractors, from any person as a condition of employment on the project.

c. No laborers or mechanics shall be charged for any tools used in performing their duties unless prior permission to make payroll deductions for such charges has been granted by the Secretary of Labor in accordance with Section 3.6 of the Copeland Act Regulations.

d. Every employee on the work covered by this contract shall be permitted to lodge, board, and trade where and with whom he elects and neither the contractor, his subcontractors, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

e. No charge shall be made for any transportation furnished by the contractor, or his subcontractors to any person employed on the work.

f. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

g. Each employee's social security number must be shown on the first payroll on which his name appears.

3. PAYMENT OF EXCESS WAGES

While the wage rates shown in the wage determination decision are the minimum hourly rates required by the contract to be paid during its life, it is the responsibility of bidders to inform themselves as to the local labor conditions, such as the length of workday and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustment of wage rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

4. SAFETY

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any individual employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, as revised from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act.

5. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the contractor shall post the Notice, Form PR-1022 on each Federal highway project in one or more places where it is readily available to all personnel concerned with the project.

6. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

a. General

(1) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in SF 23-A, General Provisions and in these Provisions. The requirements set forth in these Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the General Provisions.

(2) The contractor will work with the Federal Government in carrying out equal employment opportunity obligations and in their review of his activities under the contract.

(3) The prime contractor, and all subcontractors (not including material suppliers), holding subcontracts of \$10,000 or more, will comply with the minimum equal employment opportunity requirements set forth in the balance of this clause 6.

b. Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruit-

ment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

c. Equal Employment Opportunity Officer

The contractor will designate and make known to the contracting officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

d. Dissemination of Policy

(1) All members of the contractor's staff who are authorized to hire supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(a) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(c) The EEO Officer or appropriate company official will instruct all employees engaged in the direct recruitment of employees for the project relative to the methods followed by the contractor in locating and hiring minority group employees.

(2) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officer, etc., the contractor will take the following actions:

(a) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(b) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

e. Recruitment

(1) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." He will insert all such advertisements in newspapers, or other publications, having a large circulation among minority groups in the area from which the project work force would normally be derived.

(2) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely

to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

(3) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

f. Personnel Actions

(1) Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

(a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

(c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The contractor will investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation the contractor will inform every complainant of all of his avenues of appeal.

g. Training and Promotion

(1) The contractor will assist in locating, qualifying and increasing the skills of minority group employees and applicants, for employment.

(2) Consistent with his manpower requirements and as permissible under Federal and State regulations, the contractor will make full use of training programs, i.e., preapprenticeship apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.

(3) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

(4) The contractor will periodically review the training and promotion potential of minority group employees and will encourage eligible employees to apply for such training and promotion.

h. Unions. If the contractor relies in whole or in part upon unions as a source of his work force, he will use his best

efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the contractor, either directly or through a contractor's association acting as his agent, will include the procedures set forth below:

(1) Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

(2) Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

(3) In the event a union is unable to refer applicants as requested by the contractor within the time limit set forth in the union agreement, the contractor will, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified minority group persons.

i. Subcontracting

(1) The contractor will use his best efforts to utilize minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) The contractor will use his best efforts to assure subcontractor compliance with their equal employment opportunity obligations.

j. Records and Reports

(1) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employ-

ment opportunity obligations. The records kept by the contractor will be designed to indicate:

(a) The number of minority and nonminority group members employed in each work classification on the project.

(b) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to contractors who rely in whole or in part on unions, as a source of their work force).

(c) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees.

(d) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by the contracting officer or his authorized representative.

(3) The contractor will submit to the Federal Highway Administration a monthly report for the first three months after construction begins, and thereafter upon request, for the duration of the project, indicating the number of minority and nonminority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391.

7. SUBCONTRACTS

The contractor shall include, verbatim clauses 1, 2, 4, 5 and 6 of this continuation sheet in each of his subcontracts, except that Clause 6 will not be required for subcontracts less than \$10,000. In addition, the contractor shall include a clause requiring each subcontractor to include these clauses in any lower tier subcontracts.

POLICY AND PROCEDURE MEMORANDUM

40-5

April 25, 1969

REQUIRED PROVISIONS - FEDERAL CONTRACTS

- Par. 1. Purpose
2. Application and Form
3. Payrolls, Statements, and Labor Summaries
4. False Statements Concerning Highway Projects
5. Nonsegregated Facilities

1. PURPOSE

To prescribe, for direct U. S. Government highway contracts, the requirements covering employment, nonsegregated facilities, and false statements concerning highway projects.

2. APPLICATION AND FORM

a. The Required Provisions appearing in the enclosure (PR-39) shall be made a part of each highway construction contract and subcontract under the supervision of the Bureau of Public Roads.

b. Any special provisions relating to employment, nonsegregated facilities and false statements shall prevail over, and be inserted in the contract immediately following the Required Provisions set forth in Form PR-39.

3. PAYROLLS, STATEMENTS, AND LABOR SUMMARIES

Section II of the enclosure requires the submission of the weekly payroll and statement of compliance. All such documents shall be preserved for a period of three years from the date of final payment to the contractor.

4. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal highway projects, it is essential that all persons concerned with the projects perform their functions carefully, thoroughly, and honestly. Willful falsification, distortion or misrepresentation with respect to any facts related to the project is

a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the Notice, Form PR-1022 shall be posted by the project engineer in one or more prominent places on each Federal highway project.

5. NONSEGREGATED FACILITIES

The "Notice of Requirement for Certification of Nonsegregated Facilities" shall be placed on the face of the Invitation for Bids or on a cover sheet, in accordance with the Federal Procurement Regulations, Section 1-2.201(a)(29).

F.H. Smith Jr.

Director of Public Roads

Enclosure

Form PR-39
(Rev. 5-69)

U.S. Department of Transportation
Federal Highway Administration
Bureau of Public Roads

**REQUIRED PROVISIONS FOR HIGHWAY CONSTRUCTION CONTRACTS
UNDER BUREAU OF PUBLIC ROADS SUPERVISION**

I. GENERAL

a. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate supervision, and to all work performed on the contract by piece-work, station work, or by subcontract. In case of conflict between these Required Provisions and any related special provisions included in the contract, the special provisions shall prevail.

b. The contractor shall insert these Required Contract Provisions in each of his subcontracts, in addition to a clause requiring each subcontractor to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

**II. STATEMENTS, PAYROLLS, AND
EMPLOYMENT PRACTICES**

a. The contractor and each subcontractor shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by the Copeland Act Regulations, 29 CFR, Part 3, and by 29 CFR, Part 5, during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. The statement shall be on U. S. Department of Labor Form WH 348, "Statement of Compliance," or on an identical form on the back of U. S. Department of Labor Form WH 347, "Payroll (For Contractor's Optional Use)," or on any form with identical wording. Copies of these forms may be purchased from the Government Printing Office.

b. Certified copies of weekly payrolls shall be submitted by the contractor and each subcontractor in accordance with clause 4(b) of Standard Form 19-A.

c. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor and each subcontractor shall make all necessary arrangements for them to be cashed and shall give information to their employees regarding such arrangements.

d. No fee of any kind shall be asked or accepted by the contractor, or any of his agents or subcontractors, from any person as a condition of employment on the project.

e. No laborers or mechanics shall be charged for any tools used in performing their duties unless prior permission to make payroll deductions for such charges has been granted by the Secretary of Labor in accordance with Section 3.6 of the Copeland Act Regulations.

f. Every employee on the work covered by this contract shall be permitted to lodge, board, and trade where and with whom he elects and neither the contractor, his subcontractors, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

g. No charge shall be made for any transportation furnished by the contractor, or his subcontractors to any person employed on the work.

h. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

i. Each employee's social security number must be shown on the first payroll on which his name appears.

III. CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to contracts and subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; see 41 CFR, PART 80-1).

By the submission of this bid, the bidder, offeror, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms and other storage areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors or material suppliers for specific time periods) he will obtain identical certifications from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors or material suppliers (except where the proposed subcontractors or material suppliers have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, must be submitted prior to the award of a subcontract or the consummation of material supply agreement exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or material supply agreement, or for all subcontracts or for all material supply agreements, during a period (i.e., quarterly, semiannually, or annually).

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SUBJECT Standard Form 30, Amendment of
Solicitation/Modification of Contract

FHWA NOTICE

June 30, 1972

GS-10

The Office of the Secretary has granted FHWA an exemption from the requirement of DOT Procurement Regulations (DOTPR) 12-16.401 that Standard Form 30 be used to amend construction solicitations and contracts.

Accordingly, the regions may disregard DOTPR 12-16.401 and continue using present procedures for amending both solicitations for bids and highway construction contracts.


John R. Provan
Associate Administrator
for Administration

DISTRIBUTION: Headquarters
Regions
Divisions

5/1/30

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

March 27, 1969

INSTRUCTIONAL MEMORANDUM 25-1-69
32-64

SUBJECT: Equal Employment Opportunity Program - Direct Federal
Highway Projects

On March 17, 1969, Federal Highway Administration Order, Interim 7-2(1) was issued to delete the prequalification requirements of FHWA Order, Interim 7-2 and to incorporate a special provision of uniform requirements to be applied to all Federal-aid highway construction contracts. This new procedure will strengthen the effectiveness of the EEO Program and is designed to achieve positive equal employment opportunity results. Since uniform requirements are used they will be more readily understood and can be more effectively enforced than present procedures.

37 The special provisions in Interim 7-2(1) have been modified slightly to fit the needs of the direct Federal highway construction program and to fulfill the affirmative action program requirements of Standard Form 23-A. A copy of the special provision applicable to the direct Federal highway construction program is enclosed. As soon as possible, but not later than April 15, this special provision shall be incorporated verbatim in the bidding proposals for Forest highway projects and other projects administered by Public Roads. We are advising other Federal agencies of this action and recommending that they adopt these procedures for use on road projects which they administer.

The special provision should be included in the contract documents as a continuation sheet of Form PR-39, Required Provisions.

It is expected that the EEO Program for direct Federal construction projects will be part of the duties of project personnel. Project engineers shall monitor the EEO Program as required in the contract and, as needed, shall solicit the advice and assistance of the Regional Equal Employment Opportunity Officer.

Mr. J. M. O'Connor's June 28, 1968 memorandum and enclosed Notice to Prospective Contractors and Subcontractors (revised by Mr. O'Connor's July 1, 1968 memorandum) are hereby superseded. The notice shall be deleted from future contracts which include the EEO special provisions referred to above. The purpose of that notice was to call the contractors' attention to revisions in the regulations issued by the Secretary of Labor to implement the provisions of Executive Order 11246. Standard Form 23-A continues to require compliance with such regulations.



E. H. Swick
Deputy Director of Public Roads

Enclosure

C

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The document also outlines the responsibilities of individuals involved in the process, including the need for transparency and accountability.

The second part of the document provides a detailed overview of the various methods used to collect and analyze data. It describes the different types of data sources, such as surveys, interviews, and focus groups, and explains how this information is used to identify trends and patterns. The document also discusses the challenges associated with data collection and analysis, such as ensuring the reliability and validity of the data.

The third part of the document focuses on the implementation of the findings from the research. It discusses the various strategies used to promote behavior change and to address the underlying causes of the problem. The document also outlines the role of the community in the implementation process and the importance of ongoing evaluation and monitoring.

C

SPECIAL PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. General

- 559
- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in SF 23-A, General Provisions and these Special Provisions. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the General Provisions.
 - b. The contractor will work with the Federal Government in carrying out equal employment opportunity obligations and in their review of his activities under the contract.
 - c. The contractor and all subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more will comply with the following minimum specific requirement activities of equal employment opportunity. The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. Equal Employment Opportunity Policy

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. Equal Employment Opportunity Officer

The contractor will designate and make known to the contracting officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. Dissemination of Policy

a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities. To insure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.
- (3) The EEO Officer or appropriate company official will instruct all employees engaged in the direct recruitment of employees for the project relative to the methods followed by the contractor in locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

- (1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

- (2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment

- a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." He will insert all such advertisements in newspapers, or other publications, having a large circulation among minority groups in the area from which the project work force would normally be derived.
- b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. Personnel Actions

- a. Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:
- (1) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- (2) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

(3) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(4) The contractor will investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation the contractor will inform every complainant of all of his avenues of appeal.

7. Training and Promotion

- a. The contractor will assist in locating, qualifying and increasing the skills of minority group employees and applicants for employment.
- b. Consistent with his manpower requirements and as permissible under Federal and State regulations, the contractor will make full use of training programs, i.e., preapprenticeship, apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group employees and will encourage eligible employees to apply for such training and promotion.

8. Unions

If the contractor relies in whole or in part upon unions as a source of his work force, he will use his best efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the contractor, either directly or through a contractor's association acting as his agent, will include the procedures set forth below:

- a. Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

- b. Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
- c. In the event a union is unable to refer applicants as requested by the contractor within the time limit set forth in the union agreement, the contractor will, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified minority group persons.

9. Subcontracting

- a. The contractor will use his best efforts to utilize minority group subcontractors or subcontractors with meaningful minority group representation among their employees.
- b. The contractor will use his best efforts to assure subcontractor compliance with their equal employment opportunity obligations.

10. Records and Reports

- a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:
 - (1) The number of minority and nonminority group members employed in each work classification on the project,
 - (2) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees.
 - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among their employees.
- b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by the contracting officer or his authorized representative.
- c. The contractor will submit to the Bureau of Public Roads a monthly report for the first three months after construction begins, and thereafter upon request, for the duration of the project, indicating the number of minority and nonminority group employees currently engaged in each work classification required by the contract work.

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAY PROGRAM MANUAL

VOLUME	6	ENGINEERING AND TRAFFIC OPERATIONS
CHAPTER	4	CONSTRUCTION AND MAINTENANCE
SECTION	1	GENERAL
SUBSECTION	6	CONTRACT PROCEDURES

TRANSMITTAL 393
HHO-32
January 10, 1986

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1. PURPOSE

**The purpose of this directive is to prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).*

2. DEFINITIONS

as used in this directive:

- a. *"Administrator" means Federal Highway Administrator.*
- b. *"Division Administrator" means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.*
- c. *A "State Highway Agency" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.*
- d. *"PS&E" means plans, specifications and estimate.*
- e. *"Certification Acceptance" means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.*
- f. *"A Minority Contractor" means a minority business enterprise at least 50 percent of which is owned by minority group members or in the case of publicly owned businesses at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition minority group members are Negroes, Spanish-speaking American persons, American Orientals, American Indians, American Eskimos, and American Aleuts.*

3. APPLICABILITY

The policies, requirements, and procedures, prescribed in this directive, subject to certain modifications as provided in subparagraph 5e, apply to all Federal-aid highway projects

**Regulatory material is italicized*

except those constructed under a Certification Acceptance Plan to which only subparagraphs 7e, 8e, and 13i of this directive shall apply.

4. METHOD OF CONSTRUCTION

- a. *Except as provided in paragraph 4b below, or unless the State highway agency demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective, actual construction work shall be performed by contract awarded to the lowest responsible bidder. The State highway agency shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in paragraph 7.*
- b. *When the Division Administrator finds that it is cost effective, construction work may be performed by some method other than by contract awarded by competitive bidding pursuant to requirements and procedures prescribed by him or her. Before such finding is made, the State highway agency shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and economically. Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with the Federal-Aid Highway Program Manual (FHPM) 6-4-1-14, Contract and Force Account.*

5. SUPERVISING AGENCY

- a. *The State highway agency has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by or under the supervision of a county, city, or other local public agency. The State highway agency will be responsible for insuring that such projects receive the same degree of supervision and inspection as a project constructed under a contract let and directly supervised by that agency and that the project is completed in conformity with approved plans and specifications.*

- b. When a project is not located on a highway system over which the State highway agency has legal jurisdiction, or when other special conditions warrant, the State highway agency may arrange for a local public agency having jurisdiction over such streets or highways to perform the work with its own forces, or to let a contract therefor, provided the Division Administrator approves such proposed arrangements in advance and provided all the following conditions are met:
- (1) There is an agreement between the State highway agency and the local public agency setting forth the conditions under which the project will be constructed. The agreement shall provide that construction work performed by or under the supervision of a local public agency will be subject to inspection at all times by the State highway agency and the FHWA.
 - (2) The State highway agency certifies that the work performed by the local public agency is cost effective.
 - (3) The local public agency is paying part of the cost of the work or has other special interest therein.
 - (4) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work.
 - (5) In the case of force account work, there is full compliance with FHPM 6-4-1-14.
- c. When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this directive shall be met. To the maximum extent practicable, State highway agency general provisions, specifications, regulations, qualification requirements, contract forms and inspection procedures shall be used. Other documents and procedures may be used when conditions warrant, provided they are first approved by the State highway agency and the Division Administrator.

- d. *Although the State highway agency may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the State highway agency shall provide a full-time State-employed engineer to be in responsible charge and direct control of the project at all times. In those instances where a city or county can justify the use of consultants for these services, the city or county shall have a similar duty. The State highway agency and any such city or county shall not be relieved of its responsibilities under Federal law and the regulations in the event it utilizes the services of an engineering organization.*
- e. *When construction operations are performed on Federal-aid highway projects by any Federal agency, by Federal contract and under such agency's procedures and operations on behalf of a State highway agency or other public agency, such construction operations shall be performed under the direct supervision of the State highway agency except that such supervision may be exercised through the contracting Federal agency where it is so provided by agreement between the State highway agency and the Federal agency. The right of inspection of the work under these contracts shall be extended to all agencies involved in the project.*

6. SMALL BUSINESS PARTICIPATION

The State highway agency shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 11625, the State highway agency shall affirmatively encourage minority business participation in the highway construction program.

7. ADVERTISING FOR BIDS

- a. *No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization thereof by the Division Engineer.*
- b. *An invitation for bids shall not be issued by the State highway agency until the provisions of the applicable FHWA regulations and directives covering the administration of the Highway Relocation Assistance Program have been met*

and there exists an understanding that satisfactory traffic control devices will be installed prior to acceptance of the project. The advertising shall be done in accordance with the laws, specifications, regulations, and policies of the State in which the project is located and the applicable Federal requirements set forth in this directive and those implementing Title VI of the Civil Rights Act of 1964, under conditions that will assure free and adequate competition.

- c. The advertisement must be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the Division Engineer in special cases when justified. Longer advertising periods are desirable for large, complicated projects that will require considerable time for study and developing of cost data before realistic bids can be prepared. Advertising may include the mailing of notices or other advance information to a suitable mailing list of contractors.*
- d. The State highway agency shall obtain the approval of the Division Engineer prior to issuing any addendums to the approved plans and specifications during the advertising period. The State highway agency shall provide such assurance as may be required by the Division Engineer that all bidders have received any such addendums.*
- e. Bidding procedures on a nondiscriminatory basis shall be afforded to all qualified bidders regardless of State boundaries and without regard to race, color, sex, or national origin. If any provisions of State laws, specifications, regulations, or policies may operate in any manner contrary to Federal requirements, including Title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible contractor appropriately qualified in accordance with Paragraph 8, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, specifications, special provisions or other governing documents shall include a positive statement to advise prospective bidders of those provisions that are not applicable.*

- f. No procedure or requirement shall be imposed by any State in connection with any project which operates to restrict competitive bidding by discriminating against the purchase of a surety bond or insurance policy from any surety or insurer outside the State and authorized to do business in the State.
- g. No public agency shall be permitted to bid in competition, or to enter into subcontracts, with private contractors.
- h. In the event that conditions in subparagraph 5c(1) or (2) in FHWA directive entitled, "Physical Construction Authorization," Volume 6, Chapter 4, Section 2, Subsection 1, have not been met prior to advertisement, the advertised specifications shall include:
 - (1) a statement that the contractor will not be allowed to proceed with the physical construction of any part of the project until all residentially improved properties have been vacated and specific dates for termination of operation of businesses have been established for proper coordination with the physical construction schedule. The statement shall indicate that physical construction is not to be interpreted to include clearance of rights-of-way of residential improvements which have been permanently vacated,
 - (2) a statement concerning any acquired or unacquired parcels of right-of-way for which the lack of right of occupancy and use can be expected to interfere with construction operations,
 - (3) an estimate of the length of time such interferences can be expected to continue, and
 - (4) a statement that extensions of time will be granted, if necessary, for delays caused by interferences beyond such estimated period. This procedure should never be allowed to become the rule.
- i. Anticollusion Certification
 - (1) The State highway agency shall include a statement substantially as follows in the advertised specifications:

Title 23, United States Code, Section 112(c), requires, as a condition precedent to approval by the Federal Highway Administrator of the contract for this work, that there be filed a sworn statement executed by, or on behalf of the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such proposed contract. This sworn statement shall be in the form of an affidavit executed and sworn to by the successful bidder before a person who is authorized by the laws of this State to administer oaths. The original of such sworn statement shall be filed with the State highway agency prior to the award of the contract.

- (2) *As a prerequisite to the Division Engineer's formal concurrence in the award of the construction contract, the State highway agency must submit a copy of the required statement to the Division Engineer, or advise the Division Engineer, in writing, that the required statement has been received and is on file with the State highway agency.*

8. LICENSING AND QUALIFICATION OF CONTRACTORS

- a. *No procedure or requirement for prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed. No contractor shall be required by law, regulation or practice to obtain a license before he may submit a bid or before his bid may be considered for award of a contract. This, however, is not intended to*

preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work. It is considered desirable that such evaluation include consideration of the contractor's experience, personnel, equipment, financial resources, and performance record.

- b. The procedures and requirements a State highway agency proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Engineer for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Engineer.*
- c. Contractors may be prequalified for an annual or other period of time. When this is done, the status of each contractor so qualified should be reviewed, to whatever extent is necessary to ascertain whether conditions since the prequalification date have changed, including volume of work, which may have affected his current qualifications to undertake additional work.*
- d. The Division Engineer shall maintain a current record and resume of any laws, regulations, and specifications regarding the State's requirements, practices and procedures with respect to advertising for bids, qualifying and licensing contractors and awarding of contracts. Any revisions thereof are to be transmitted promptly and directly to the regional office and Washington headquarters.*

- e. *The State highway agency shall establish procedures and maintain records that will identify contractors with regard to minority and nonminority classification.*
- f. *The Division Engineer shall annually review the actual practices of each State in administering its approved qualification, licensing, advertising, bidding, and awarding procedures and requirements to ascertain whether they are operating to accomplish the intended results. For purposes of evaluating compliance with the requirements of Title VI in these areas, the State highway agency shall establish procedures and maintain records that will identify contractors and subcontractors with regard to minority or nonminority classification within 90 days after the effective date of this subsection. The review is to be made in accordance with the instructions in Attachment 1 to this directive. A written report of the review is to be submitted to the regional office with copies of the report also furnished to the Washington Offices of Civil Rights and Highway Operations. Where changes in the State's requirements or procedures have occurred since the last report, comments on such changes should be made to indicate whether the revised procedures or requirements are operating satisfactorily and, if not, the action taken by the Division Engineer to correct the situation. The State's reaction to such corrective action should also be included as should discussion of any actions contemplated as a result thereof.*

9. BID OPENING AND BID TABULATIONS

- a. *All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. The State highway agency shall prepare and forward tabulations of bids to the Division Engineer. These tabulations shall be certified by a responsible State highway agency official and shall show (1) item details for at least the low three acceptable bids and (2) the total amounts of all other acceptable bids.*

- b. The Division Engineer or his appropriate representative shall attend each opening of bids. When a bid opening is held in a remote locality or involves only minor projects, the Division Engineer may dispense with FHWA representation, and accept a report thereon by a State highway agency representative.
- c. The division and regional offices and Washington Headquarters are each to be furnished a copy of the State highway agency's tabulation of bids for each Federal-aid project, as soon as practicable after the bids are opened. If the tabulation, as prepared by the State highway agency does not contain all the following data, the division office shall add omitted items by note on the tabulation transmitted to the regional office and Office of Highway Operations, or attached thereto:
- (1) The engineer's estimate in detail for contract items.
 - (2) Remarks explaining letting action taken or considered, covering:
 - (a) unacceptable bids due to incompleteness, irregularities, collusion, qualifying clauses, etc., regardless of whether such bids are or are not read at the opening,
 - (b) recommended award or rejection of bids, and
 - (c) comments regarding bid combinations, tied bids, or other unusual features.

10. TIED BIDS

- a. *Two or more Federal-aid projects may be tied together for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.*
- b. *Federal-aid projects and State-financed projects may be combined in one contract where the conditions and size of the projects are so similar that the unit costs on*

agencies. When the contract provisions provide for stockpiling, the amount of the claim upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or other designated location in the vicinity of such construction, or stockpiled by the contractor at a location not in the vicinity of such construction, if the Division Administrator determines that:

- a. because of required fabrication at an off-site location the materials cannot be stockpiled in the vicinity of the project,
- b. the material has been purchased by the contractor, and
- c. the material conforms with the requirements of the plans and specifications.

The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. This value may not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

15. (RESERVED)

16. USE OF PUBLICLY OWNED EQUIPMENT

- a. Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local unit of government for highway construction purposes may be warranted or justified. A proposal by any State highway agency for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be in the public interest to do so under the conditions peculiar to the individual project or locality.
- b. As used herein the term "publicly owned equipment" means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations. The term "rental" may be considered to include depreciation and expense of upkeep in addition to other charges.

- c. Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the proposed use of such equipment is clearly set forth in the PS&E submitted to the Division Administrator for approval.

In such cases the advertised specifications shall also specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged therefor, and the points of availability or delivery of the equipment, together with the express condition that the successful bidder has the option either of renting part or all of such equipment from the State or local unit of government or otherwise providing the equipment necessary for the performance of the contract work.

- d. In the rental of publicly owned equipment to contractors, the public agency should not profit at the expense of Federal funds. Accordingly,

- (1) rental rates shall be reasonably representative of the cost of providing such equipment, or
- (2) there shall be credited to the project a lump sum amount determined as the approximate profit, if profit is derived by the agency furnishing the equipment, thereby reducing the total participating cost of the project.

- e. Unforeseeable causes may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local unit of government. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

- f. When publicly owned equipment is used on projects constructed on a force account basis, Federal funds may participate whether such work is performed (1) at agreed unit prices, or (2) on an actual cost basis. In the case of force account work to be performed by the State highway agency or local unit of government at agreed unit prices, the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the State highway agency shall submit to the Division Administrator for approval the schedule of rates proposed to

be charged, exclusive of profit, for the publicly owned equipment made available for use. The Division Administrator will verify the rates from the public agency record, and upon consideration of all available data, may approve such rates as are determined to be fair and reasonable under the circumstances. If the State highway agency has established uniform rates for use by counties or other public agencies on State-aid work, such rates may be accepted by the Division Administrator.

17. PARTICIPATION IN CONTRACT CLAIM AWARDS AND SETTLEMENTS

- a. *The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration proceeding, administrative board determination, or court judgment, or a contract claim settlement entered into in lieu of such proceedings, shall be determined on a case-by-case basis. However, Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law. The Division Administrator may approve SHA requests for participation in settlement of claims. Explanations will be provided to the SHA in those cases where claims have been rejected.*
- b. *The FHWA shall be made aware by the SHA of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. Claims arising on projects handled under Certification Acceptance (C.A.) procedures should also be brought to the attention of the FHWA in those cases where the type of claim is unusual, controversial, or is not covered by C.A. procedures approved in the State. Specific implementation procedures, whether under C.A. or not, should be jointly developed by each SHA and FHWA division that will respond to the circumstances in the particular State. However, negotiated settlements, such as between a contractor and a resident engineer or a district construction engineer, or any other less formalized methods, that fall short*

of arbitration, court judgment, or administrative board review, should be handled under regular change order procedures for Federal-aid projects.

- c. *When requesting Federal participation, the SHA shall set forth in writing the legal and contractual basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a SHA audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. The decision to waive the audit requirement will be made by the Division Administrator on a case-by-case basis.*

Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the SHA shall include in its submissions a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved. Legal issues beyond the expertise of the Division Administrator are to be referred to the regional legal counsel for review.

- d. *In those cases where the SHA receives an adverse decision in an amount more than can be justified by the SHA, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that, (1) the FHWA was consulted and concurred in the proposed course of action, (2) all avenues of appeal have been considered, and (3) the SHA pursued the case diligently and in a professional manner.*
- e. *Federal funds will not participate, (1) if it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not accepted within the standards of the profession in project design, plan preparation, contract administration, or other activities which gave rise to the claim (this may also include, in certain extreme cases, improper management relating to number of personnel assigned to design and construction*

work), (2) in such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorneys' fees paid by a State to an opposing party in litigation, and (3) in tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

- f. Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.
- g. In cases where SHA's affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.
- h. To reduce the incidence of contract claims, attention should be given to the elimination of ambiguities in contract language. The American Association of State Highway and Transportation Officials Guide Specifications for Construction contains suggested contract language that can be adopted or used as an example.

18. CHANGES AND EXTRA WORK

- a. Subsequent to authorization by the Division Administrator to proceed with a project or any undertaking thereunder, no change shall be made which will increase the cost of the project to the Federal Government or alter the termini, character, or scope of the work without prior authorization by the Division Administrator. It is expected that the preliminary engineering and the preparation of plans, specifications, and contract documents will be performed with sufficient thoroughness, accuracy, and care that changes and extra work during the construction can be held to a minimum and limited almost exclusively to revisions and additions necessitated by conditions that could not reasonably be anticipated before the project was advertised for bids or force account operations commenced.

- b. *All major changes in the plans and contract provisions and all major extra work must be approved in writing by the Division Engineer in advance of their effective dates except that when emergency or unusual conditions justify, the Division Engineer may give tentative advance approval orally to such changes or extra work and ratify such approval in writing as soon thereafter as practicable. Form PR-1365 may be used for this purpose, provided the State highway agency is furnished a copy or copies of the completed form. To the extent feasible, agreement should be reached between the State and the Division Engineer on such related items as basis of payment, extent of participation, work methods, time adjustments, etc., which may have an influencing affect on the change or extra work prior to authorization of such work. For minor changes and minor extra work, written approval is necessary but such approval may be given retroactively at the discretion of the Division Engineer. Such minor changes and minor extra work items would include, but not necessarily be limited to, modifications in construction items within the scope of the plans and contract provisions when such modifications are required during the progress of construction.*
- c. The Division Engineer is responsible for final approval of all requests for changes or extra work. If the change or extra work involves an amount that might result in the final cost of the project exceeding the project agreement amount, the Division Engineer may approve the change or extra work order as to the work involved, but shall concurrently advise the State that Federal participation in any such work the cost of which cannot be met from Federal-aid funds provided under the then effective project agreement will be contingent upon additional Federal-aid funds being made available for the project by a modified project agreement, to be executed prior to or at the final voucher stage. In any case involving questionable or unusual features, the advice and concurrence of the regional administrator, and in the more important cases, the Washington Headquarters, should be obtained before the change or extra work is approved.
- d. *Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Division Engineer.*

19. CONTRACT TIME AND CONTRACT TIME EXTENSIONS

- a. The contract time should be based on a full evaluation of all factors involved. In computing the length of time that would be required to complete the work with the typical contractor organization likely to bid on the work, appropriate consideration should be given to the local field and weather conditions, complexity of the work, sequence of construction, and method of handling traffic. The urgency of completion of the facility is an added consideration that may affect the final contract time assigned to a contract.
- b. *Contract time extensions granted by a State highway agency which affect project costs or liquidated damages, shall be subject to the concurrence of the Division Engineer and will be considered in determining the amount of Federal participation. To be approved by the Division Engineer, extensions of contract time must be fully justified and adequately documented. The Division Engineer shall, throughout the progress of construction of a Federal-aid project, keep currently informed regarding the time consumed in relation to the work accomplished and regarding the working conditions encountered that are beyond the contractor's control and that detrimentally affect the progress of the work. At the time such conditions occur, or as soon thereafter as it is practicable to make a determination, agreement should be reached between the Division Engineer and the State highway agency as to any adjustments in contract time that may be appropriate on account thereof. The State highway agency should have adequate written procedures to assure uniform treatment of time extensions.*
- c. Approval of time extensions due to delays in delivery of materials is generally inconsistent with FHWA policy, unless some unusual market condition such as an industry-wide strike, natural disaster or areawide shortage arises after bids are taken and prevents procurement of materials within the allowable time limitation.
- d. The pertinent requirements of Volume 6, Chapter 6, Section 1, Subsection 1; Volume 6, Chapter 4, Section 2, Subsection 1; and Volume 1, Chapter 4, Section 4 of the Federal-Aid Highway Program Manual are intended to preclude almost without exception FHWA approval of time

extensions related to utility, railroad, and right-of-way clearance delays. However, it is recognized that occasionally very unusual circumstances may justify granting an exception to this rule. As a minimum, exceptions to the above-stated rule should not be granted unless it can be shown that:

- (1) the construction work was actually delayed by the right-of-way, railroad, or utility difficult
- (2) the contractor did everything required of him/her by the contract to minimize the delay, and
- (3) the State was unable to exercise effective control of the situation despite its best efforts.

20. SUBMISSION OF CONTRACT AND FORCE ACCOUNT DOCUMENTS. A conformed copy of the contract between the State highway agency and the construction contractor and of each force account agreement shall be furnished to the Division Administrator as soon as practicable after it is executed.

21. LABOR AND EMPLOYMENT

- a. No convict labor shall be employed in construction or used for maintenance or any other purpose at the site or within the limits of any Federal-aid project from the time of award of the construction contract or the start of work on force account construction until final acceptance of the work by the State highway agency.
- b. No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project. The selection of labor to be employed by the contractor on any Federal-aid project shall be of his/her own choosing.

- c. Employment shall be provided without regard to race, color, religion, sex, or national origin.
 - d. The advertisement or call for bids on any contract for the construction of a project on the Federal-aid system either shall include the minimum wage rates determined therefor by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are a part of the contract covering the project.
 - e. When construction work on Federal-aid highways is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct Federal contracts shall be applicable.
22. HEALTH AND SAFETY. Contracts for projects shall include provisions designed:
- a. to insure full compliance with all applicable Federal, State, and local laws governing safety, health, sanitation, and
 - b. to require that the contractor shall provide all safeguards, safety devices, and protective equipment and shall take any other actions reasonably necessary to

protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

23. TERMINATION AND DEFAULT OF CONTRACT

- a. *When a Federal-aid contract is terminated by the State highway agency the extent of Federal-aid participation in the contract costs including final settlement will depend upon the merits of the individual case. In no event will Federal funds participate in any allowance for anticipated profit on work not performed.*
- b. *Normal Federal-aid PS&E, advertising, and award procedures are to be followed when a State highway agency awards the contract for completion of a defaulted Federal-aid contract. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed either:*
 - (1) *the amount representing the payments made under the defaulted contract plus payments made under the new contract, or*
 - (2) *the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract, whichever amount is the lesser.*
- c. *On the other hand, if the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA would then consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.*

24. FALSE STATEMENTS

Willful falsification, distortion or misrepresentation with respect to any facts related to the project is a violation of Federal law.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

United States Code, Title 18, Section 1020, reads as follows:

Whoever, being an officer, agent, or employee of the United States, or any State or Territory, or whoever, whether a person, association, firm or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specification, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever, knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to the material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-aid Road Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

25. DETERMINATION AND DOCUMENTATION OF PAY QUANTITIES

- a. *The State highway agency shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.*
- (1) Source documents such as handwritten haul tickets should be validated both at the point of loading and at the point of delivery by State highway agency representatives unless pay quantities are documented by some alternative procedure approved by the Division Engineer. When automatic digital printout haul tickets are used in lieu of handwritten haul tickets an alternative procedure for validating these haul tickets at the point of loading may also be approved by the Division Engineer.
 - (2) The State highway agency may establish a procedure subject to approval of the Division Engineer wherein a lesser amount of documentation may be permitted for miscellaneous material items and small quantities. Such a procedure would have particular application to small quantities of intermittently delivered material on large projects and for contracts covering safety, control of junkyards, and other small projects.
 - (3) The Division Engineer may approve a procedure under which small quantities of material may be accepted by the project engineer on the basis of weights determined and placed on the delivery ticket by the contractor or supplier. Such a procedure should provide that the State highway agency representative who observes receipt of the material and obtains the delivery ticket inspect the load and indicate on the ticket that the quantity of material delivered appears reasonably in accord with the weight shown on the ticket before accepting the material for incorporation in the work.

- (4) The following examples suggest approximate maximum quantities of material which may be accepted on the basis of weights supplied by the contractor or supplier and which should be sufficient to cover the quantities required by most small contracts:
- (a) Aggregates - Not to exceed approximately 100 tons per day nor more than approximately 500 tons per project.
 - (b) Bituminous Mixtures - Not to exceed approximately 50 tons per day nor more than approximately 250 tons per project.
- b. *Records of initial source documents, pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 23 CFR, Part 17, and as contained in Volume 1, Chapter 6, Section 2 of this manual.*

In cases where records pertaining to the determination of pay quantities are destroyed by an act of God or by other causes not involving negligence or acts of commission on the part of the State, the Federal Highway Administration under the authority granted in 23 CFR 1.9 may allow Federal-aid participation in the claimed quantities, provided the remaining project records and remeasured data indicates the reasonableness of these quantities which can be verified, thus providing a basis for accepting the claimed quantities.

PROGRAM FOR REVIEWING THE COMPETITION OBTAINED IN BIDDING
PROCEDURES AND METHODS AFFECTING THE SELECTION OF SUBCONTRACTORS,
MATERIAL SUPPLIERS, AND LESSORS OF EQUIPMENT

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I. PURPOSE

The purpose of this program is to prescribe the procedures for FHWA personnel to follow in reviewing, evaluating, and preparing a report covering the competition obtained by the State highway departments (and, where applicable, the local public agencies) on Federal-aid highway construction work and the procedures and methods utilized which affect the selection of subcontractors, material suppliers, and lessors of equipment.

The purpose of the review and evaluation is to determine whether contracting procedures and practices for such work are in accordance with FHWA requirements, and those pursuant to Title VI of the Civil Rights Act of 1964.

The resulting report shall show whether the State's methods do or do not meet FHWA requirements and those pursuant to Title VI of the Civil Rights Act of 1964.

II. SCOPE

Review and evaluation of the State's competition obtained in bidding shall take into consideration the procedures established and the practices followed in prequalifying prospective bidders, advertising for bids, qualifying low bidders, licensing of contractors, and awarding contracts. The review and evaluation of the State's competitive bidding practices shall also ascertain whether actions taken were being made in accordance with the provisions of Title VI without regard to race, color, or national origin. Furthermore, in the review of procedures and methods utilized which affect the selection of subcontractors, material suppliers and lessors of equipment, an evaluation shall be made as to whether the actions taken were made in accordance with the provisions of Title VI without regard to race, color or national origin.

III. RESPONSIBILITIES

Review and evaluation shall be performed, and the resulting report shall be prepared, by the division office in accordance with responsibilities assigned to the division by paragraph 7f. of Volume 6, Chapter 4, Section 1, Subsection 6 of the Federal-Aid Highway Program Manual. Division office personnel who are involved with Civil Rights matters shall also be given the opportunity to review and comment on the report.

IV. FREQUENCY

Review and evaluation shall be made whenever warranted by the circumstances, but not less frequently than once each year.

V. REPORT

A report shall be written in narrative form, in the sequence of this program, and it shall cover information developed during the review and evaluation. Information and other

material accumulated and used as a basis for, or in support of, the report shall be indexed and arranged in the same sequence as the report.

The report resulting from the reviews should include statements indicating which of the State's files were examined and the approximate sampling made of each. The person or persons making the review will personally examine the State's records to insure that the approved procedures are actually being followed. The reviews required by this directive should be fully coordinated with similar reviews which may be performed as an audit function in order to avoid possible duplication of effort.

The report and supporting papers shall become a part of the records of the division office.

VI. DEFINITIONS

1. Prequalifying Prospective Bidders

The expression "prequalifying prospective bidders" is defined as meaning a process by which a contracting agency in advance of considering, opening, or accepting bids, or in advance of issuing bid proposals, establishes limitations on amounts and types of work contractors are permitted to bid on and to have underway at one time.

2. Qualifying Low Bidders

For the purpose of this program, the expression "qualifying low bidders" is defined as meaning a process by which a contracting agency proceeds, after bid opening, to consider the qualifications of the apparent low bidder to perform the work.

3. Minority Contractor

A "minority contractor" is defined as a minority business enterprise at least 50 percent of which is owned by minority group members or in the case of publicly owned businesses at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition minority group members are Negroes, Spanish-speaking American persons, American Orientals, American Indians, American Eskimos, and American Aleuts.

VII. REVIEW PROCEDURES

1. General

The personnel conducting the review must familiarize themselves with pertinent information available in the division office before performing elsewhere any of the prescribed assignment. The following are illustrations of applicable material: 23 U.S.C. 112; 23 CFR; Volume 6, Chapter 4, Section 2, Subsection 1 of the Federal-Aid Highway Program Manual; Title VI of the Civil Rights Act of 1964, and regulations and directives pursuant thereto; files pertaining to bidding competition; and State statutes, regulations and specifications.

2. Prequalifying Prospective Bidders; Qualifying Low Bidders

a. Review to be performed at the State highway agency.

- (1) Discuss with the responsible State official the procedures and policies for determining qualifications of proposed contractors.
- (2) Point out to the official that FHWA personnel are aware that information furnished to the State by prospective contractors is treated as strictly confidential by the State and assure him that such information will be so treated by FHWA personnel.
- (3) On a selective sampling basis review the basic records utilized by the State in prequalifying prospective bidders, or in qualifying low bidders, including pertinent correspondence. Determine whether all procedures and practices followed appear consistent with Federal-aid regulations and requirements and provisions set forth pursuant to Title VI of the 1964 Civil Rights Act. Irrespective of the method used by the State in determining whether, to what extent, or for what type of work contracts will be awarded to prospective contractors, such method is to be evaluated as to reasonableness, impartiality, and consistency in its application for all contractors without regard to race, color, or national origin. Determine

the number of minority and nonminority contractors which have been prequalified since the last review. List the number of minority and nonminority contractors who were denied prequalification and the reasons therefore, since the last review. Where minority contractors were denied prequalification, review each denial to the extent as necessary to determine equality of treatment. Determine the degree of encouragement and assistance which the State has given to minority contractors to become prequalified or involved with Federal highway construction work.

Determine the effectiveness of procedures established by the State to, (a) locate and identify minority firms with capabilities of serving the Federal-aid highway program as contractors, subcontractors, or suppliers of goods or services, and (b) to make prequalified contractors aware of the availability of such minority firms.

- (4) If any contractor has defaulted since the last review on a Federal-aid highway construction contract, determine the cause of the default and report whether there was proper evaluation of the contractor's capabilities to perform the work. Identify contractor as to whether minority or nonminority.
- (5) If any contractor or prospective contractor has been disqualified for undertaking or further performing of Federal-aid work, determine whether any deviation from Federal-aid regulations and requirements was involved in such action. List the number of minority or nonminority contractors that were involved since the last review.
- (6) In evaluating the practices followed in prequalifying prospective bidders, consider the frequency of, and basis for, changing established ratings. List action taken on minority and nonminority contractors. Also consider the amount of time available or

permitted to process applications, as related to the time between the date of issuance of the notice to bidders and the date of opening of bids. Note any difference in time for processing minority and nonminority applications.

- (7) Review the effect that the ability of a contractor to obtain letters of credit and performance bonds has on the prequalification or qualification.

3. Licensing of Contractors

a. Review to be performed at the State level.

- (1) If the review discloses that a contractor is required to be licensed, ascertain whether the highway department is authorized to receive and consider a bid on proposed Federal-aid highway construction work from a prospective contractor who is not licensed.
- (2) If contractors are required to be licensed in advance of commencing work on Federal-aid projects, determine whether there has been undue delay in issuing such a license, and, if so, the reasons therefor. Also review the reasons for any refusal to issue such a license. Consider the reasonableness, impartiality, and consistency of application of the licensing requirements. Determine whether there has been any instance in which award was not made to the low bidder due to his inability to obtain a license without unreasonable delay. Determine whether any contractor has been granted additional time or compensation because of delay in issuing a license to him. List the number of minority and nonminority contractors that were involved since the last review and the reasons thereof.
- (3) If licensing of contractors is performed by a board separate from the highway department, the personnel performing the review should contact a responsible official of the board, explain the purpose of his review, the Federal-aid provisions and those requirements pursuant to Title VI of the Civil Rights Act of 1964 that are applicable to licensing of highway contractors.

4. Advertising for Bids

a. Review to be performed at the State highway department.

- (1) Discuss the advertising procedures with the highway department officials responsible for ordering the insertion of paid advertisements in newspapers and periodicals or for selecting other publicity media which announce contemplated highway construction lettings. Determine the highway department's procedures for circulating this information to minority contractors and the minority communities.
- (2) On a selective sampling basis, review the basic records pertaining to publicizing notices to bidders. Compare the practices followed as evidenced by proofs of publication, publisher's invoices, accounting, and other pertinent records related to projects selected for review with the State and Federal requirements. Publicized notices are required to contain the Standard DOT Title VI, "Notification to Bidders." In evaluating the effectiveness of the procedures for publicizing notices to bidders, consider such factors as (a) the length of the advertising period, (b) timing between publication dates, (c) the extent of circulation (which should include reaching the minority communities and minority contractors), (d) practices followed regarding release of engineer's estimates, (e) the use of classified legal-type advertisements rather than display advertisements set in large type inserted in a prominent location in the publication which simply show the description, bid opening date, and where bid proposals are obtainable, and (f) the basis for selecting the media used. Consider, also, publicity methods used in addition to newspapers and periodicals, such as news releases, radio, television, mailing notices to past and other potential bidders, as well as others interested, such as a standing list of material suppliers, contractors' associations, and minority contractors, subcontractors, and suppliers of goods

and services. In considering the mailing list procedures, ascertain when and how additional names are added or removed, whether any distinction is made and for what purpose between minority, nonminority, in-State, or out-of-State contractors, whether any changes in current mailing list procedures are contemplated, and elapsed time between mailings of notices to bidders and the bid openings.

5. Award of Contracts

a. Review to be performed at the State highway agency.

- (1) Discuss the procedures for awarding contracts with the highway agency official responsible for the function.
- (2) On a selective sampling basis review the basic records and compare the practices followed with State and Federal requirements, including the provisions of Title VI.
- (3) In reviewing the award practices, consideration should be given to impartiality and reasonableness, the reasons for rejecting bids, decisions whether to reject the only bid received, decisions whether to reject a low bid which exceeds the engineer's estimate, decisions whether to reject the low bid if it apparently is unbalanced, elapsed time between bid opening and award, number of bid deposits held and length of time held after date of bid opening, and nature of bid deposits required. Where action was taken which affected the award of contract, determine whether bidders involved were minority or nonminority.

6. Review to be performed at local public agencies.

If any local public agency awards Federal-aid highway construction contracts the same review shall be made of the records and procedures thereof as is prescribed to be performed at the State level. It is recognized that a considerable number of local public agencies may be involved in any one State. In such cases these reviews may be made on a sampling basis with emphasis being given to local public agencies having large programs and/or known weaknesses.

The personnel performing this review should arrange an appointment with the official in charge of the operations of the local public agency, explain the purpose and scope of the review, make arrangements necessary to review the records and procedures, and point out to the official that FHWA personnel are aware that information furnished to local public agencies by prospective contractors is treated as strictly confidential by them and assure him that such information will be so treated by FHWA personnel.

7. Affirmative Actions

- a. Has the State received any specific civil rights complaints involving their competitive bidding procedures? What corrective action, if any was needed, has the State taken?
- b. Review the affirmative actions taken by the State to encourage general contractors to utilize minority subcontractors, material suppliers, lessors of equipment, and suppliers of goods and services.
- c. Review procedures used by the State to assure that subcontract agreements, first and second tier, and material supply and equipment lease agreements contain the Title VI contract provisions (PR-1273 or PR-1316).



U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAY PROGRAM MANUAL

VOLUME	6	Engineering and Traffic Operations
CHAPTER	4	Construction and Maintenance
SECTION	1	General

SUBSECTION 7 Price Changes for Asphalts and Fuels

Transmittal 197
June 16, 1976
HHO-32

- Par. 1. Purpose
2. Background
3. Comments - Federal-aid Projects
4. Comments - Direct Federal Projects
5. Price Escalation Clause - Direct Federal Projects

1. PURPOSE

- a. To recommend that States establish authority to include provisions for asphalt and fuel price escalations in contracts on short notice, as the need arises.
- b. To make the use of a price escalation clause for Federal projects, on which the FHWA is the contracting agency, optional with the contracting officer.

2. BACKGROUND

- a. The original Notice established temporary requirements and was issued at a time when severe energy conservation measures were contemplated by the administration and Congress. It was not possible then to predict what sort of measures would be put into effect.
- b. The overall situation has changed to where the price of petroleum products is no more unstable than other consumer elements of the economy, and the risks by

the contractor of unpredictable changes in cost are not significantly greater or less than in other material and supply needs. For the latest annual period covered by available data, price variations have been as follows:

- (1) Gasoline and diesel fuel have increased in price, in a fairly regular pattern (Diesel fuel is assumed to have increased in price proportionally with gasoline) by 9.7 percent (National Petroleum News Magazine).
- (2) The wholesale asphalt price increased less than 1 percent (Engineering News Record).
- (3) The consumer price index increased 7 percent (Bureau of Labor Statistics Monthly Labor Review of January 1976).

Comparing the increases in fuel prices with the increases in the consumer price index indicates that fuel price increases were not substantially greater than overall price increases.

- c. Local variations in fuel prices may differ substantially from the national variations.
- d. Although the need for immediate adoption of contract price adjustment clauses has passed, there is no assurance that the situation may not worsen again in the future. Therefore, we believe the following actions would be beneficial.

3. COMMENTS - FEDERAL-AID PROJECTS

- a. It is urged that States have authority available to them to include in contracts, provisions for price adjustments for asphalts and fuels. This authority could then be exercised on the prerogative of the State contracting authority by incorporating such clauses into newly advertised contracts on short notice as the need arises.
- b. In developing appropriate contract provisions to effect these adjustments, contracting authorities should be guided by the related AASHTO suggestions

and guidelines which are set forth in an AASHTO publication entitled "Suggestions and Guidelines for Combating Shortages and Minimizing the Effect of Price Uncertainties for Materials and Fuel in Construction" issued in 1974.

- c. Fuel and asphalt price adjustment clauses for Federal-aid highway contracts should include a method of payment of adjustments that would avoid the necessity for a detailed verification of actual fuel consumption. For example, this could be accomplished by use of appropriate certifications of consumption related to amounts purchased, or use of fixed State estimates of probable consumption. If the latter method is used, it is suggested that periodic price adjustment payments be provided during the life of the projects which can be prorated against the dollar value of work completed during the adjustment period. The fuel usage factors published in Highway Research Circular No. 158, "Usage Factors for Highway Construction - July 1974," can be used to estimate probable fuel quantities for projects.

4. COMMENTS - DIRECT FEDERAL PROJECTS

- a. The use of the clause, "Price Escalation," set forth in paragraph 5 should be optional at the discretion of the contracting officers in IFB's (Invitations for Bids) and RFP's (Requests for Proposals) for direct Federal projects on which FHWA is the contracting agency, and work is anticipated to last more than 3 months from the time of award.
- b. Section 1-18.201, Federal Procurement Regulations (FPR), permits use of escalation clauses in fixed price contracts where omission would preclude a significant number of firms from bidding or would likely result in inclusion of unwarranted contingencies which would increase the cost to the Government.
- c. Section 1-3.404-3 of FPR permits application of escalation provisions where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period and where contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation.

and guidelines which are set forth in an AASHTO publication entitled "Suggestions and Guidelines for Combating Shortages and Minimizing the Effect of Price Uncertainties for Materials and Fuel in Construction" issued in 1974.

- c. Fuel and asphalt price adjustment clauses for Federal-aid highway contracts should include a method of payment of adjustments that would avoid the necessity for a detailed verification of actual fuel consumption. For example, this could be accomplished by use of appropriate certifications of consumption related to amounts purchased, or use of fixed State estimates of probable consumption. If the latter method is used, it is suggested that periodic price adjustment payments be provided during the life of the projects which can be prorated against the dollar value of work completed during the adjustment period. The fuel usage factors published in Highway Research Circular No. 158, "Usage Factors for Highway Construction - July 1974," can be used to estimate probable fuel quantities for projects.

4. COMMENTS - DIRECT FEDERAL PROJECTS

- a. The use of the clause, "Price Escalation," set forth in paragraph 5 should be optional at the discretion of the contracting officers in IFB's (Invitations for Bids) and RFP's (Requests for Proposals) for direct Federal projects on which FHWA is the contracting agency, and work is anticipated to last more than 3 months from the time of award.
- b. Section 1-18.201, Federal Procurement Regulations (FPR), permits use of escalation clauses in fixed price contracts where omission would preclude a significant number of firms from bidding or would likely result in inclusion of unwarranted contingencies which would increase the cost to the Government.
- c. Section 1-3.404-3 of FPR permits application of escalation provisions where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period and where contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation.

materials or supplies listed above the pay items in the bid schedule as covered by this clause, the Contractor shall promptly notify the Contracting Officer of the amount and effective date of each increase or decrease and furnish certified original quotations and invoices or contemporary quotations, as appropriate, in accordance with paragraph (b).

- d. Upon receipt of the notification in paragraph (c) for any increase from a supplier's original quoted price between 5 percent and 20 percent or any decrease in excess of 5 percent, the Contracting Officer will increase or decrease payment(s) under this contract by the amount resulting from multiplying the algebraic difference between invoice price and original quoted price submitted under paragraph (c) by the quantity of the particular material or supply subject to this clause and purchased for performance of this contract.
- e. Upon receipt of the notification in (c) for any increase from a supplier's original quoted price in excess of 20 percent, the Contracting Officer will adjust payment(s) under this contract in accordance with paragraph (d) except that:
 - (1) The lowest contemporary price quotation furnished by the Contractor from three available suppliers will be substituted for the invoice price, and
 - (2) The maximum contemporary quotation applicable in paragraph (d) will be _____ percent (180 percent suggested) of the original quoted price.
- f. Original quotations, invoices, and contemporary quotations submitted under this clause shall include the supplier's name and location, quantity represented, unit price and date of purchase (for invoices), and will be subject to audit verification if required by the Contracting Officer.
- g. Price escalation payment adjustments under this clause are limited to prime contractors and first tier subcontractors and suppliers.

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SECTION	1	GENERAL
SUBSECTION	8	SUPPORTIVE SERVICES FOR MINORITY, DISADVANTAGED, AND WOMEN BUSINESS ENTERPRISES

TRANSMITTAL 395
July 2, 1986
HHO-32

- Par. 1. Purpose
 2. Authority
 3. Definitions
 4. Policy
 5. Implementation of Supportive Services
 6. Supportive Services Funds Obligation
 7. Monitoring Supportive Services
 8. Sources of Assistance
 9. State Audit Responsibilities

1. PURPOSE. **To prescribe policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.*

2. AUTHORITY. *23 U.S.C. 101, 140(c), 304, 315;
49 CFR 1.48(b).*

3. DEFINITIONS

- a. Minority Business Enterprise - *(as used in this directive), refers to all small businesses which participate in the Federal-aid highway program as a minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE), all defined under 49 CFR Part 23. This expanded definition is used only in this directive as a simplified way of defining the firms eligible to benefit from this supportive services program.*

*Italicized material is published in 23 CFR Part 230B.

- b. Supportive Services - those services and activities provided in connection with MBE programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts.
 - c. State highway agency - that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" is considered equivalent to "State highway agency" (SHA) if the context so implies.
4. POLICY. Based on the provisions of Section 119 of Pub. L. 97-424, dated January 6, 1983, it is the policy of the Federal Highway Administration (FHWA) to promote increased participation of MBEs in Federal-aid highway contracts in part through the development and implementation of cost effective supportive services programs through the SHAs.
5. IMPLEMENTATION OF SUPPORTIVE SERVICES
- a. Subject to the availability of funds under 23 U.S.C. 140(c), the SHA shall establish procedures to develop, conduct, and administer MBE training and assistance programs specifically for the benefit of women and minority businesses. Supportive services funds allocated to the States shall not be used to:
 - (1) finance the training of SHA employees or to provide services in support of such training and
 - (2) provide bonus payments to supportive services contractors. The SHAs are not required to match funds allocated to them. Individual States are encouraged to be actively involved in the provision of supportive services. Such involvement can take the form of staff, funding, and/or direct assistance to augment the supportive services efforts financed by Federal-aid funds.

b. *The SHAs shall give preference to the following types of services:*

- (1) services related to identification, pre-qualification, and certification assistance, with emphasis on increasing the total number of legitimate MBEs participating in the Federal-aid highway program;*
- (2) services in connection with estimating, bidding, and technical assistance designed to develop and improve the capabilities of minority businesses and assist them in achieving proficiency in the technical skills involved in highway construction;*
- (3) services designed to develop and improve the immediate and long-term business management, recordkeeping, and financial accounting capabilities;*
- (4) services to assist MBEs to become eligible for and to obtain bonding and financial assistance;*
- (5) services relating to verification procedures to ensure that only bona fide MBEs are certified as eligible for participation in the Federal-aid highway program;*
- (6) follow-up services to ascertain the outcome of training and assistance being provided; and*
- (7) other services which contribute to long-term development, increased opportunities, and eventual self-sufficiency of MBEs.*

c. Supportive services should continue to be provided to all eligible MBEs in the near term. However, in an effort to promote greater self-sufficiency in the MBE contracting community, States are encouraged to explore the use of a graduation concept. In parallel with this concept, States should also consider curtailing supportive services activities as MBEs gain experience. Operational assistance

(e.g., estimating) by the supportive services contractor or SHA should be limited to MBEs newly entering the highway construction program. Outreach and training (group and one-on-one) should continue to be emphasized.

- d. *A detailed work statement of the supportive services which the SHA considers to meet the guidance under this directive and a program plan for meeting the requirements of paragraph 5b of this directive and accomplishing other objectives shall be submitted to the FHWA for approval. Basic features that are expected to be addressed are:*
- (1) a brief summary statement of the previous year's supportive services program accomplishments;
 - (2) a brief summary of the present status of the program and its current perceived needs;
 - (3) a statement identifying specific tasks and a timetable or schedule for accomplishing these tasks;
 - (4) a reasonably complete discussion stating the objectives of the effort, the method of approach, and extent of effort to be employed;
 - (5) a cost estimate for the proposed effort sufficiently detailed for meaningful evaluation; and
 - (6) a statement about what the State is doing with its own resources to meet these needs. This provides some indication of continuity between successive supportive services programs and identifies situations where duplication of effort may exist.

- e. The Regional Administrator's authority to approve the State's detailed work statement may be redelegated to the Division Administrators. When detailed work statements are approved by the Division Administrator, a copy shall be provided to the regional office. Following approval, a project agreement shall be executed by the Division Administrator providing for FHWA reimbursement to the SHA. A single project agreement may cover all approved State work statements during a given fiscal year.
- f. *State highway agencies which desire to provide or obtain services other than those listed in paragraph 5b of this directive shall submit their proposals to the FHWA for approval. These proposals shall be submitted, with recommendations of the division and regional offices, to the Washington Headquarters, HHO-32, for approval.*
- g. *When the SHA provides supportive services by contract, formal advertising is not required by FHWA; however, the SHA shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. Evaluation criteria which will be used to evaluate proposals should be clearly described and include specific weighted values to be used in the evaluation. The evaluation of proposals by the SHA must include consideration of the proposer's ability to effect a productive relationship with majority and minority contractors, contractors' associations, minority groups, and other persons or organizations whose cooperation and assistance will increase the opportunities for MBEs to compete for and perform contracts and subcontracts.*
- h. *In the selection of contractors to perform supportive services, SHAs shall make conscientious efforts to search out, and utilize the services of qualified minority or women organizations, or minority or women enterprises. Regional and division offices shall assure that these efforts are made.*

6. SUPPORTIVE SERVICES FUNDS OBLIGATION. *Supportive services funds shall be obligated in accordance with the procedures set forth in 23 CFR 230.117(b) (FHPM Volume 6, Chapter 4, Section 1, Subsection 2). The point of obligation is defined as that time when the FHWA has approved a detailed work statement for the supportive services in accordance with paragraphs 5e or 5f of this directive.*
7. MONITORING SUPPORTIVE SERVICES
- a. *Supportive services programs shall be continually monitored and evaluated by the FHWA and SHA so that needed improvements can be identified and instituted. This requires the documentation of valid effectiveness measures by which the results of program efforts may be accurately assessed.*
- b. Program effectiveness measures should include the following:
- (1) contracting history of MBEs receiving supportive services assistance (e.g., bonding capacity, contracts successfully completed, increased capital assets, etc.);
 - (2) nature and extent of supportive services provided to each MBE with results (e.g., contracts received, bonding obtained, etc.);
 - (3) history of bidding activity of MBEs receiving supportive services assistance; and
 - (4) innovative techniques employed which directly result in MBEs receiving contracts.
- c. At both the Washington Headquarters and regional office levels, the general FHWA responsibility for monitoring the supportive services program shall rest with Engineering and Program Development personnel. It is the expressed concern of the FHWA to assure that supportive services enhance the opportunities for MBEs to participate in the

Federal-aid highway program and contribute to the growth and eventual self-sufficiency of minority firms. Monitoring the impact of supportive services which have been provided shall be the responsibility of Civil Rights personnel. State and FHWA Civil Rights specialists, at the appropriate organizational level, should closely coordinate with other appropriate offices and actively participate in the monitoring function.

8. SOURCES OF ASSISTANCE. *It is the policy of the FHWA that all potential sources of assistance to MBEs be utilized. The SHA shall take actions to ensure that supportive services contracts reflect the availability of all sources of assistance in order to maximize resource utilization and avoid unnecessary duplication. Additional assistance to MBEs may be available from such Federal sources as the Small Business Administration, the Department of Commerce's Minority Business Development Agency, and the Department of Transportation's Program Management Centers.*
9. STATE AUDIT RESPONSIBILITIES. *The MBE supportive services program is an integral component of the SHA Federal-aid programs and shall be subject to audits, as appropriate, in accordance with procedures set forth in FHPM Volume 1, Chapter 9, Section 1, Subsection 1.*



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SUBSECTION 14 CONTRACT AND FORCE ACCOUNT (JUSTIFICATION
REQUIRED FOR FORCE ACCOUNT WORK)

Transmittal 358
May 23, 1983
HHO-32

- Par. 1. Purpose
2. Application
3. Definitions
4. Determination of More Cost Effective Method
5. Finding of Cost Effectiveness

1. PURPOSE. **The purpose of this directive is to prescribe procedures in accordance with 23 U.S.C. 112(b) for a State highway agency to request approval that highway construction work be performed by some method other than contract awarded by competitive bidding.*
2. APPLICATION. *This directive applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State highway agency or a subdivision thereof in pursuant of agreements between any other State highway agency and the Federal Highway Administration (FHWA). This directive does not apply to projects constructed under a Certification Acceptance Plan in those States where the Secretary has discharged his/her responsibility pursuant to 23 U.S.C. 117, except where employees of a political subdivision of a State are working on a project outside such political subdivision.*
3. DEFINITIONS. *The following definitions shall apply for the purpose of this directive:*

*Italicized material is published in 23 CFR 635.

- a. A "State highway agency" is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.
- b. The term "some other method" of construction as used in 23 U.S.C. 112(b) shall mean the "force account" method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed herein for force account work will apply.
- c. The term "force account" shall mean the direct performance of highway construction work by a State highway agency, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.
- d. The term "county" shall mean any county, township, municipality or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.
- e. The term "cost effective" shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

4. DETERMINATION OF MORE COST EFFECTIVE METHOD

- a. Congress has expressly provided in the cited legislation that the contract method based on competitive bidding shall be used by a State highway agency or county for performance of highway work financed with the aid of Federal funds unless the State highway agency demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective.
- b. It may be found cost effective for a State highway agency or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

- c. No precise rules can be prescribed nor can specific examples be followed. If, however, a State highway agency or county in order to perform force account work must acquire or rent substantially more equipment than required for its normal operations or if force account work by a particular organization shows a substantial increase over a preceding year, it would be difficult under such circumstances to justify an affirmative finding compatible with the foregoing authorization.

5. FINDING OF COST EFFECTIVENESS

- a. Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that:

- (1) By reason of the inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar type facilities owned or operated by a public agency, a railroad or a utility company, provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in subparagraphs 5b and 5c below. Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility services to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to a major installation project such as an extensive highway lighting system.
- (2) Because of the urgent necessity for timely completion of temporary operations (i.e., emergency repairs, the need for which is concurred in by the Division Administrator, undertaken during or immediately

following the occurrence of a natural disaster or catastrophic failure, to reduce the extent of damage, to protect remaining facilities or to restore travel), it is in the public interest to perform such temporary operations either by force account or by the contract method. Therefore, the work may be performed by the method most suited for the work and a formal affirmative finding is not required in either case.

- b. When a State highway agency desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under subparagraph 5a or projects constructed under an approved Certification Acceptance Plan, be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kinds of work to be performed, the estimated costs therefor, the estimated Federal funds to be provided, and setting forth the reason or reasons that force account for such project is considered to be cost effective.
- c. The Division Administrator shall notify the State highway agency in writing of his/her determination that under the circumstances relating to the project, force account is or is not found to be cost effective.

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SUBSECTION	16	GENERAL MATERIAL REQUIREMENTS

Transmittal 373
April 24, 1984
HHO-32

- Par. 1. Purpose
2. Authority
3. Definitions
4. Applicability
5. Use of Material Made Available by a Public Agency
6. Restrictions Upon Materials
7. Buy America Requirements
8. Material or Product Selection
9. Guaranty and Warranty Clauses
1. PURPOSE. **To prescribe requirements and procedures relating to product and material selection and use on Federal-aid highway projects.*
2. AUTHORITY. 23 U.S.C. 112, and 315; section 165, STAA of 1982 (Pub.L. 97-424, 96 Stat. 2097); and 49 CFR 1.48(b).
3. DEFINITIONS (as used in this directive)
- a. State - as defined in 23 U.S.C. 101.
- b. FHWA Division Administrator - the chief Federal Highway Administration official assigned to conduct business in a particular State.
- c. State Highway Agency - that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction

*Italicized material is published in 23 CFR 635D.

- d. Standard Specifications - a book of specifications approved for general application and repetitive use.
 - e. Supplemental Specifications - approved additions and revisions to the standard specifications.
 - f. Special Provisions - additions and revisions to the standard and supplemental specifications applicable to an individual project.
 - g. PS&E - plans, specifications, and estimates.
 - h. Material - any tangible substance incorporated into a Federal-aid highway project.
4. APPLICABILITY. The requirements and procedures prescribed in this directive apply to all contracts relating to Federal-aid highway projects, except those constructed under a Certification Acceptance Plan.
5. USE OF MATERIAL MADE AVAILABLE BY A PUBLIC AGENCY
- a. Contracts for highway projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. Exception to this requirement may be made when there is a definite finding by the State highway agency and concurred in by the Division Administrator, that it is in the public interest to require the contractor to use material furnished by the State highway agency or from sources designated by the State highway agency. In cases such as this, the FHWA does not expect mutual sharing of costs unless the State highway agency receives a related credit from another agency or political subdivision of the State. Where such a credit does accrue to the State highway agency, it shall be applied to the Federal-aid project involved. The designation of a mandatory material source may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. Otherwise, if a State highway agency proposal to designate a material source for mandatory use would result in higher project costs, Federal-aid funds shall not

participate in the increase even if the designation would conserve other public funds.

- b. The provisions of subparagraph 5a above will not preclude the designation in the plans and specifications of sources of local natural materials, such as borrow aggregates, that have been investigated by the State highway agency and found to contain materials meeting specification requirements. The use of materials from such designated sources shall not be mandatory unless there is a finding of public interest as stated in subparagraph 5a above.
- c. Federal funds may participate in the cost of specification materials made available by a public agency when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in paragraph 14, Volume 6, Chapter 4, Section 1, Subsection 6 of this Manual.
- d. To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State highway agency and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federal participation will be limited to the unit cost of such material to the State highway agency.
- e. When the State highway agency or another public agency owns or has control over the source of a local natural material, the unit price at which such material will be made available to the contractor must be stated in the plans or special provisions. Federal participation will be limited to (1) the cost of the material to the State highway agency or other public agency; or (2) the fair and reasonable value of the material, whichever is less. Special cases may arise

that will justify Federal participation on a basis other than that set forth above. Such cases should be fully documented and receive advance approval by the Division Administrator.

- f. Costs incurred by the State highway agency or other public agency for acquiring a designated source or the right to take materials from it will not be eligible for Federal participation if the source is not used by the contractor.
 - g. The contract provisions for one or a combination of Federal-aid projects shall not specify a mandatory site for the disposal of surplus excavated materials unless there is a finding by the State highway agency with the concurrence of the Division Administrator that such placement is the most economical except that the designation of a mandatory site may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. It is expected that in most instances the disposal site will be at the contractor's option. This would not preclude the State highway agency from showing a possible disposal site in the contract provisions.
 - h. Where mandatory borrow or waste sites will be permitted based on environmental considerations and which were discussed in the Environmental Impact Statements, such considerations may be used as the basis for subsequent PS&E public interest findings.
6. RESTRICTIONS UPON MATERIALS. No requirement shall be imposed and no procedure shall be enforced by any State highway agency in connection with a project which may operate:
- a. to require the use or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict, or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States, or

- b. to prohibit, restrict, or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the Administrator to carry out such policies.

7. BUY AMERICA REQUIREMENTS

- a. The provisions of this paragraph shall prevail and be given precedence over any requirements of this directive which are contrary to this paragraph. However, nothing in this paragraph shall be construed to be contrary to the requirements of paragraph 6 of this directive.
- b. No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:
 - (1) The project either: (a) includes no permanently incorporated cement or steel materials or (b) if cement or steel materials are to be used, all manufacturing processes for these materials must occur in the United States.
 - (2) The State has standard contract provisions that require the use of domestic materials and products, including cement and steel materials, to the same or greater extent as the provisions set forth in this paragraph.
 - (3) The State elects to include alternate bid provisions for foreign and domestic steel and/or cement materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and/or cement materials which is acceptable to the Division Administrator may be used. The contract provisions must (a) require all bidders to submit a bid based on furnishing domestic steel and/or cement materials, and (b) clearly state that the contract will be awarded to the bidder who submits the lowest bid based

on furnishing domestic steel and/or cement materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and/or cement materials by more than 25 percent.

- (4) When cement and steel materials are used in a project, the requirements of this paragraph do not prevent a minimal use of foreign cement and steel materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and/or cement products as they are delivered to the project.
- c. A State may request a waiver of the provisions of this paragraph if (1) the application of those provisions would be inconsistent with the public interest; or (2) steel and cement materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.
- (1) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.
 - (2) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.
 - (3) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

- (4) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.
 - (5) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the Federal Register for public comment.
 - (6) In determining whether the waivers described in this paragraph will be granted, the FHWA will consider all appropriate factors including, but not limited to, the cost, administrative burden, and delay that would be imposed if the provision were not waived.
- d. Standard State and Federal-aid contract procedures may be used to assure compliance with the requirement of this paragraph.

8. MATERIAL OR PRODUCT SELECTION

- a. Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless
- (1) such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable unpatented items,
 - (2) the State highway agency certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists, or

- (3) such patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.
- b. When there is available for purchase more than one nonpatented, nonproprietary material, semifinished or finished article or product that will fulfill the requirements for an item of work of a project and these available materials or products are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated prices for the related item(s) of work are estimated to be approximately the same, the PS&E for the project shall either contain or include by reference the specifications for each such material or product that is considered acceptable for incorporation in the work. If the State highway agency wishes to substitute some other acceptable material or product for the material or product designated by the successful bidder or bid as the lowest alternate, and such substitution results in an increase in costs, there will not be Federal-aid participation in any increase in costs.
- c. A State highway agency may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the Division Administrator as being in the public interest. When the Division Administrator's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.
- d. Attachment 1 of this directive sets forth the FHWA requirements regarding (1) the specification of alternative types of culvert pipes; and (2) the number and types of such alternatives which must be set forth in the specifications for various types of drainage installations.

- e. Direct reference to patented or proprietary material, specifications, or processes of any nature should not be included in standard or supplemental specifications since they are subject to change without notice to or acceptance by the States or the Federal Highway Administration. In specific circumstances where the State's certification in accordance with 8a(2) above is approved, the complete specification or such parts as are applicable should be incorporated in the standard or supplemental specifications.
- f. The use of trade names in specifications and on plans should be avoided. Instead, specifications should be formulated that will obtain the desired results and at the same time assure full opportunity for competition among equivalent materials, equipment and methods. *Reference in specifications and on plans to single trade name materials will not be approved on Federal-aid contracts.* In exceptional cases, however, where satisfactory specifications cannot be developed by the highway agencies or obtained from organizations maintained for the specific purpose of developing specification requirements based on laboratory tests or other performance requirements, there will be no objection to the use of trade name designations provided all, or at least a reasonable number, of acceptable materials or products are listed. The foregoing procedure will be permitted for a reasonable period while specifications based on performance requirements are being developed. These requirements are not intended to limit the development of new materials, equipment or methods or to discourage ingenious utilization of them. New materials, equipment or methods that show sufficient promise may be included and evaluated in experimental construction in accordance with the provisions of Volume 6, Chapter 4, Section 2, Subsection 4 of this Manual.

9. GUARANTY AND WARRANTY CLAUSES

- a. *Except as provided in paragraph 9b below, clauses that require the contractor to guarantee or warrant materials and workmanship or to otherwise maintain the work for a specified period after its satisfactory completion by the contractor*

and its final acceptance by the State, will not be approved for use in Federal-aid contracts. Work performed and materials replaced under such guaranty or warranty clauses after final acceptance of work are not eligible for Federal participation. The foregoing restrictions are not intended to prevent a State from benefiting under any warranty or guaranty given as a customary trade practice for any material or product purchased for use on a Federal-aid project. No objection will be made to provisions in Federal-aid contracts requiring the contractor to obtain, and assign to the State, such warranties or guarantees. Plant establishment periods are not to be considered under this provision.

- b. Contracts which involve furnishing and/or installing electrical or mechanical equipment should generally include contract clauses that require:
 - (1) manufacturers' warranties or guarantees on all electrical and mechanical equipment, consistent with those provided as customary trade practice, and/or
 - (2) contractors' warranties or guarantees providing for satisfactory in-service operation of the mechanical and electrical equipment and related components for a period not to exceed 6 months following project acceptance.
- c. The intent of the warranty and/or guaranty requirements of paragraph 9 is clarified below:
 - (1) It is the intent of paragraph 9b(1) to provide for equipment which performs as intended by the manufacturer for the period guaranteed by the manufacturer when installed in accordance with the recommendations of the manufacturer. Failure to perform as indicated above requires that the manufacturer replace in kind or repair, at his option, the equipment in question. User labor costs resulting from replacement of the equipment are not a burden to be borne by either the manufacturer or the contractor. Likewise, it is not the intent of the paragraph that user labor

costs due to normal maintenance or emergency, or costs not normally provided as trade practice be borne by either the manufacturer or the contractor.

- (2) Paragraph 9b(2) recognizes the fact that installations involving electrical or mechanical components often require a period of operation before an acceptable level of service can be established. It is the intent of paragraph 9b(2) to obtain from the contractor a level of workmanship which will assure the State of an operational system devoid of contractor laxities. The stated operational period will allow for adjustment, repair or replacement of equipment or materials not covered by manufacturers' guarantees and the correction of malfunctions attributable to installation deficiencies.

- d. The cost of operating motorist-aid facilities for the first few months after installation is considered an integral part of installing and ironing out early operational problems. A contract requirement for such work is considered acceptable on Federal-aid projects. The following special provision may be included in Federal-aid highway construction contracts where a State considers it warranted:

For a period of 18 months after acceptance of the construction work by the State the contractor shall perform, or with the State's approval arrange for the performance of, all the work necessary to keep the completed facility in full operation. The work shall include furnishing all necessary labor, materials, equipment, tools, transportation, supplies, and incidentals required to complete the work. The work shall not include repairs or replacements made necessary by damage resulting from vandalism or traffic accidents.

No direct payment will be made for this work but payment will be considered as included in the bid prices for other items of the contract.



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SUMMARY OF ACCEPTABLE CRITERIA FOR SPECIFYING TYPES OF CULVERT PIPES

Type of Drainage Installation	Alternatives Required		AASHTO Designations to Be Included With Alternatives	Application	Remarks
	Yes	No Number			
Cross Drains Under High Type Pavement **		X		Statewide	*Any AASHTO Approved Material
Other Cross Drain Installations	X		3 Minimum M-170 & M-190	Statewide	*Any AASHTO Approved Material
Side Drain Installations	X		3 Minimum M-36	Statewide	*Any AASHTO Approved Material
Special Installation Conditions		X		Individual Installation	Specified to Meet Special Conditions
Special Drainage Systems (Storm Sewers Inverted Siphons, etc.)		X		Individual Installation	Specified to meet Site Requirements

* Types not included in currently approved AASHTO specifications may be specified if recommended by the State with adequate justification and approved by FHWA.

** High type pavement is generally described as FHWA construction type codes I, J, K, L, and plant mix and penetration macadam segments, respectively shown in the right-hand columns of type codes G and H having a combined thickness of surface and base of 7 inches or more (or equivalent) or that are constructed on rigid bases.

